U.S. Federal Decriminalisation of Marijuana in the 1970s: Policy Window or Pipedream?

Timothy Heine

A thesis submitted in partial fulfillment of the requirements of a Master of Arts in Political Science

Department of Political Science, School of International Social and Political Sciences
College of Arts
University of Canterbury
2016

TABLE OF CONTENTS

Introduction

The history of US marijuana policy is predominantly that of prohibition and strict enforcement. There was however a period under Presidents Ford and Carter where this policy came under a great deal of scrutiny and criticism. Two influential reports in the Marijuana Commission(Commission and others, 1972), and the White Paper on Drug Abuse(Force, 1975) came out in favour of decriminalization, a number of states decriminalized, and the American Bar Association and The National council of churches also supported decriminalization of Marijuana. The country was tired of a war on drugs and as Ford tried to distance himself from Nixon's trademark policies, those advocating strictly enforced prohibitionist policy found themselves, for the first time since marijuana was made illegal, with adversaries that could wield real political power. While a number of factors converged to bring the decriminalization of marijuana to the government's agenda, having a sitting President in Jimmy Carter and Drug Czar in Peter Bourne publicly and actively endorsing such a policy was, and still is, unprecedented. This coincided with the pro legalization group NORML being led by a particularly savvy entrepreneur in Keith Stroup, while those on the side of prohibition were struggling to find a unifying voice as the Customs and the newly formed DEA fought bitterly. As marijuana consumption had moved from the fringes of immigrants groups into mainstream white American culture, societal attitudes toward the drug were also changing. Policy makers were coming to terms with their own children's experimentation with the drug and the narrative of marijuana as a killer drug was loosing credibility with the general population. In order to better understand the forces that pushed federal decriminalization of marijuana to the governments agenda, the agenda setting theory of policy windows is applied. This theory contends that, in order for legislative change to occur, an issue must gain prominence as a problem over and above other competing issues. The policy community must have the technicalities of a solution for this problem worked out, and the solution must be politically viable. As a theory, policy windows is criticized for not taking into account the historical trajectory of an issue. In order to allow for this, the first section looks at the history of marijuana prohibition and its architect Harry J. Anslinger, as well as the rise of the counter culture and the

impact of the huge increase in drug use during the 1960s and early 70s. The bulk of the writing centers around the application of policy windows to marijuana law under the Ford and Carter administrations and the final section compares and contrasts the forces that pushed but ultimately prevented federal marijuana law reform under Carter with the forces that are at play today. During Jimmy Carters presidency it would seem that while forces in the policy and problem streams were strong enough to allow for federal decriminalization of marijuana, the political realities and level of conviction of those that opposed it, both within government and in the general population, were far more powerful than those proposing decriminalization had anticipated. In the current climate however, those advocating the liberalization of drug policies can point to the racial inequalities that are exacerbated by the drug war, as well as the destabilization of supplier countries such as Mexico in order to bolster the moral force of their argument. This in conjunction with the data from aboard and domestically that decriminalisation of marijuana is a policy that can work in the long term, and the economic benefit of legalizing states, mean that the current political climate is probably more susceptible to legislative change than was the case under the Carter administration.

History of Drug Prohibition

In order avoid a study that is devoid of political and historical precedent, this chapter aims to canvas the history of U.S. drug policy from the 1930s until the start of Nixon's second term in the 1970s. The goal of this chapter is not to produce a comprehensive history of federal drug policy, as that is not within the scope of this project, and it has been attempted by more qualified individuals and in much greater works. In attempting a complete history, I would run the risk of placing too great an emphasis on certain events or characters, while ignoring others that are particularly pertinent to the story. However, to dive into an analysis of drug policy under the Carter Administration without any reference to the past runs even greater risks, especially considering that one of the major critiques of Kingdon's (2011) policy windows framework, which underpins the present study, is that it does not consult history in order to gain insights into long-term policy cycles (Mucciaroni, 1992). Therefore, the purpose of this chapter is, with reference to academic literature cited previously, to create a context with which to view the application of policy windows theory to marijuana laws under the Carter Administration.

The academic literature of the late 1970s tended to portray harm reduction and liberalisation of drug laws as a fait accompli, the authors confident in the notion that the U.S. would not return to the failed policies of Prohibition and the lack of coherent results evident in the failed Nixon initiative, the so-called War on Drugs (Rock, 1977). Politically, there seems to be a collective amnesia around drug control measures that have been instituted in the past, and while the complaint of a lack of historical example is often cited when it comes to issues of public policy, Franklin Zimmring (1992, p. 45) states that, "even given the dismal norm for historical awareness in policy debates, the immunity to historical evidence that characterises the contemporary discussion of drugs in the United States is peculiarly pervasive". Gore Vidal (1973, p. 374) voiced this sentiment even more pointedly in a *New York Times* piece on drug abuse, making the remark that, when it came American drug policy, "[it] always existed in a kind of time vacuum … [with] no public memory of anything that happened before last Tuesday".

An example of the typically complete lack of reference to the past can be found in the 1989 *National Drug Control Strategy* (The White House, 1989), which stated that "our drug problem is getting worse" without reference to the reasons for both Nixon's 1971 and Reagan's 1982 failed drug initiatives. Furthermore, the *National Drug Control* Strategy boldly claimed that America was experiencing "the worst epidemic of illegal drug use in history … far more severe, in fact, than any ever experienced by an industrialised nation" (The White House, 1989, p. 3). The veracity of this statement is doubtful, especially considering the high levels of drug dependence in the post-Civil War period and the twin peak in Americans' drug use that occurred in the late 1970s. The upshot of this unwillingness to look back and to learn from past failures of drug policies is "an almost verbatim repetition of sentiments and standpoints that each succeeding orator seems convinced are being uttered for the first time" (Zimring, 1992, p. 45).

Choosing to look back at the history of drug policy does create other issues, however. Arguably, drug use is a complicated cultural phenomenon that does not react significantly to changes in government policy (Zimring, 1992, p. 74), but rather increases or decreases based on "individual choices of lifestyle and values" (Slaughter, 1987, p. 470). Indeed, research conducted in a myriad of cities with marked differences in legal environments and enforcement practices found that "government policy has no effect on cannabis use" (Hall, 2004, p. 161). For more conservative political commentators who would highlight the decrease in marijuana use under the Reagan Administration and the sharp increase in the early 1990s under Clinton's regime, this analysis may be hard to accept, yet liberal scholars would, in stark contrast, point to the increases in other substances abused during the same respective time periods. Furthermore, liberal scholars may have a legitimate point in highlighting quantitative figures illustrating the abject failure of Nixon's War on Drugs.

In the debate revolving around the efficacy of the U.S. Government's drug policy, the lessons from (alcohol) Prohibition in 1920–1933 often come to the fore, with some analysts claiming Prohibition failures to be so uncontroversial as to require little if any documentation (Tyrrell, 1997), yet even this claim is avidly countered, with other conservative scholars suggesting that perhaps Prohibition

was a success in that there was a 30% decline in alcohol consumption. Furthermore, while Prohibition did produce a black market in Chicago and New York with the associated corruption of public officials, it is unclear how widespread the ill effects of the black market really were; in fact, it could be argued that subsequent Hollywood gangster movies have blown the issue out of all proportion (Hall, 2004, p. 157).

Those in favour of a harm reduction approach often claim that they are only interested in whatever policies alleviate suffering; however, "utilitarian arguments sometimes appear to weigh costs and benefits in an objective manner, yet they assign these weights based on underlying perceptions of right and wrong that often reflect a sense of morals or rights" (Earleywine, 2002, p. 226). The essence here is that when it comes to formulating drug policy, everyone comes to the table with values and morals that guide their decisions on what seems to be the best course of action. There is no such thing as a purely rational drug policy.

Not only is drug policy complicated, often counter-intuitive and value-laden, it is also open to political manipulation. Much of the published academic literature refers to racial drivers behind drug laws and the harm that has been brought to bear on minority communities as a result, which began in 1875 when San Francisco officials instituted the first anti-opium laws (Musto, 2002, p. x; Falco, 1996, p. 120; Jensen and Gerber, 1998, p. 21; Bonnie and Whitebread, 1974a, p. 36). One prominent scholar argues that the driver behind this legislation was the excess of seemingly idle Chinese labour after the completion of the Trans-Continental Railroad (Musto, 1991), and that this issue was used to demonise the Chinese and to justify a swathe of anti-Chinese immigration legislation. Likewise, when the Great Depression started to bite, U.S. states with large numbers of immigrant Mexican and Caribbean workers were the first to institute anti-cannabis statutes (Jensen and Gerber, 1998, p. 9). During this time, marijuana use was far from mainstream, being mostly associated with jazz musicians, the avant-garde and Mexican immigrant farm workers (Levinson, 2002, p. 18). It was a substance with which the population at large had little, if any, knowledge or experience with.

Accordingly, “lurid tales of violent crimes committed by allegedly marijuana-crazed criminals ran in the popular press of the 1920s and 1930s, filling the vacuum of knowledge about cannabis” (Slaughter, 1987, p. 419). In one government pamphlet from 1935, it was estimated that 50% of the violent crimes committed in areas populated by Mexicans, Spaniards, Latin Americans, Greeks or Negros were related to marijuana use, and the pamphlet went on to state that “prolonged use of marijuana frequently develops a delirious rage which sometimes leads to high crimes such as assault and murder. Hence marijuana has been called the ‘killer drug’” (Jensen and Gerber, 1998, p. 10).

Alongside the racial and surplus labour arguments explaining motivations for enacting drug legislation are economic factors. Scholars argue that the primary motivation behind initial marijuana legislation was the desire to end the hemp industry, thus removing a major competitor to wood pulp for paper (Earleywine, 2002, p. 231), or that, in more recent times, the drug war has been used as a guise for American military and economic involvement in strategic foreign nations (Blackman, 2004, p. 46; Chomsky, 2010). The prison industrial complex also benefits financially from drug prohibition, and its lobbyists work hard to keep drug violation penalties harsh (Jarecki, 2012)

In addition to the potentially confounding ulterior motives and counter-intuitive nature of drug policy, it is very difficult to collect accurate data about drug use and economics from a black market. In saying this, it does seem to be in the best interests of everyone involved in drug legislation to overstate the problem, whether they are pro- or anti-drug. Drug enforcement bureaucracies receive more funding if drug use is seen to be growing; pro-legalisation groups such as the National Organization for the Reform of Marijuana Laws (NORML) point to high rates of cannabis use as a rationalisation for legalising it, arguing that it cannot be doing that much harm if millions of Americans are regular users and that the government is missing out on a huge source of tax revenue. Added to this maelstrom, the media, which benefits from sensational stories about big drug busts and high use rates, produces facts and figures that are murky to begin with and have a tendency to be blown out of all proportion.

The next section focuses on the well-known historic figure, Harry J. Anslinger and his effects on marijuana policy and public thought, which lasted

well beyond his retirement in 1962. Key moments in the rise of the counter-culture under John F. Kennedy and Lyndon B. Johnson and the skyrocketing rates of marijuana use are described, followed by an account of President Nixon's War on Drugs. The intent is to set the stage for the heart of the current research, which has been explored already in the preceding section on the softening social and political attitudes towards drug use that occurred during the Ford (1974–1977) and Carter (1977–1981) regimes.

The Anslinger Era

Harry J. Anslinger was a man who almost single-handedly forged the direction of U.S. domestic and international narcotics control policy. He was born into the Progressive Era (from the 1890s to the 1920s); he achieved his first political breakthrough by gaining British cooperation in enforcing the Volstead Act. His 30-year tenure as head of the Federal Bureau of Narcotics (FBN) helped galvanise American attitudes towards drug users, marking them as criminals in need of criminal justice, rather than promoting the notion that drug abuse should be seen as a public health issue (Erlen and Spillane, 2004, p. 61). Anslinger's tenacity gave him the ability to shut down more moderate views on drug policy, and his political savviness gave him the foresight to attach drug policy to whatever the hot topic of the day was, from an excess of immigrant labour during the Depression, to making narcotics a war issue during World War Two (WWII), to portraying drug use as part of the imagined Communist Plot of the 1950s. Anslinger was a gifted bureaucrat and believed strongly in the immorality of drug use. He served under five presidential administrations, and during his career, he was often referred to in the media, the Congressional Record and contemporary journals as the world expert on narcotic drugs (Erlen and Spillane, 2004, p. 65).

In a book he co-authored, titled *The Murders* (Anslinger and Oursler, 1961), Anslinger recounted the story of how, as a youth, he heard a woman screaming in agony and felt sure she would die. Eventually, the woman's 12-year-old son returned with morphine from the drugstore. The woman was instantly quietened, and in retrospect, Anslinger was amazed that such a potent

substance was available over the counter at a drugstore, even to children (Erlen and Spillane, 2004, p. 63).

This early fascination with drug policy lay dormant for many years while Anslinger worked as a diplomat in Germany during World War One (WWI), after which he worked in the Hague and Hamburg and became quite concerned with Bolshevik imperialist tendencies. The State Department in Washington, D. C. did not share his concerns, however, and essentially ignored his warnings of Bolshevik revolutionaries moving to the U.S. en masse. Anslinger believed the intelligence work he was conducting was of great value and felt that his subsequent relocation to La Guairá, Venezuela was a serious backward step in his career.

During this time, however, Anslinger used the diplomatic skills he had picked up in Europe to persuade the British to start issuing landing certificates. This system allowed the British to keep a record of all ship movements in the Bahamas and helped restrict bootlegged rum from making it to the U.S. This surprising diplomatic achievement was rewarded with a temporary detail to the Prohibition Unit, and by 1929, Anslinger had become the Assistant Commissioner of Prohibition (Musto, 1999a, p. 210). He regarded this position as "a thankless and impossible assignment" (Erlen and Spillane, 2004, p. 64), yet he pursued the cause with vigour, out of loyalty to the law of his country.

All through his role as a Prohibition agent, Anslinger believed the Volstead Act was failing due to a lack of enforcement. He believed that the law lacked dissuasive power, and that the way to remedy this was to not only outlaw the sale, but also the purchase of liquor, and to include severe first-time offense penalties, such as a $5,000–$50,000 fine and a 2- to 5-year prison term (Musto, 1999a, p. 210). This strict enforcement, which was symptomatic of Protestant Prohibitionist ideology, continued with Anslinger throughout his career and pervades drug policy thinking to this day. Along with his black-and-white take on substance use, he was seen as trustworthy and incorruptible, which was not the norm with Prohibition and Narcotics Agents in the late 1920s. Anslinger was chosen to replace Levi Nutt as head of the Narcotics Division when accusations of corruption were levelled at Nutt. Anslinger was seen as a man untainted by corruption, which helped him become the Head of the Narcotics Division, later

re-named the FBN (Musto, 1999a, p. 209). Although he had no relevant medical training with which to devise policy regarding drug use, Anslinger's experiences in diplomacy in post-WWI Europe were seen to be more relevant to his role, as the drug problem was starting to become more of an international than a domestic issue (Erlen and Spillane, 2004, p. 64).

Having taken over the FBN, Anslinger embarked on a campaign to have marijuana made federally illegal, which was eventually achieved in 1937 with the passing of the Marijuana Tax Act. He used the public lack of knowledge regarding marijuana to portray its effects in a substantially slanted way. Anslinger launched a media campaign warning of the dangers of marijuana at a crucial time, when there was an excess of labour nationwide due to the Depression, and many ethnic minorities were used as scapegoats for economic issues. Popular scapegoats included Mexicans who had fled their nation's civil war a decade earlier in order to find work in the U.S. Many prominent scholars (Blackman, 2004; Falco, 1996; Musto, 1999a; Trujillo, 2011; Winterbourne, n.d.) suggest that policy makers and legislators combined economic factors with racial prejudices in order to produce legislation that was aimed at reducing competition with White workers and to assert the racial dominance of White America. Anslinger claimed that 50% of the violent crimes committed by Mexicans, Turks, Filipinos, Greeks, Spaniards, Latin-Americans and Negroes were as a result of marijuana addiction (Winterbourne, n.d., p. 97). In a letter published in the *Alamosa Daily Courier*, Anslinger wrote:

> I wish I could show you what a small marihuana cigarette can do to one of our degenerate Spanish-speaking residents. That's why our problem is so great; the greatest percentage of our population is composed of Spanish-speaking persons, most of whom are low mentally, because of social and racial conditions. (Trujillo, 2011, p. 15)

Anslinger also made full use of the Hollywood movie screen to warn of the dangers of marijuana by pushing for the production of such films as *Marijuana — Weeds with Roots in Hell, Reefer Madness,* and *Assassin of Youth* (Blackman, 2004,

p. 56). At this time in the U.S., the general population had little knowledge of marijuana and its effects, as it was mostly used by fringe elements in society, such as Mexican migrant labour and those involved in the burgeoning jazz movement. Consequently, Anslinger was able to cultivate whatever public opinion he liked regarding the drug, regardless of the lack of evidence suggesting a correlation between marijuana use and violent crime (Trujillo, 2011, p. 14). The general lack of experience with marijuana and its users, coupled with the ethos of the era in which Anslinger ran his propaganda campaign against 'pot', which was defined by tough economic times and the unprecedented popularity of eugenics, made his efforts to demonise marijuana and to make it federally outlawed extremely successful (Reiman, n.d., p. 110).

The driving force behind the passing of the Marijuana Tax Act of 1937 was the claimed link between violent crime and marijuana use. In pushing for this tax legislation, which would effectively outlaw marijuana, Anslinger used emotive propaganda with good effect: "how may murders, suicides, robberies, criminal assaults, hold-ups, burglaries, and deeds of maniacal insanity it [marijuana] causes each year, especially among the young, can only be conjectured" (Kaplan, 1970, p. 134). The implication in the above quote is that marijuana causes users to commit a great number of crimes, yet the literal reading of this quote is more accurate. At the time, Anslinger had no solid evidence that marijuana caused any of the above-listed crimes; the effects of the drug really could only be conjectured.

Initially, when Anslinger first looked at the possibility of having marijuana made federally illegal, he thought the Supreme Court would see this move as overstepping constitutional bounds, but when the National Firearms Act was passed in 1934 in order to restrict gang access to high-powered weapons, the FBN saw an opportunity to lobby for similar legislation (Musto, 1999a, p. 222), with one key difference. The objective of the firearms legislation was to restrict the number of publicly available dangerous weapons, whereas with the Marijuana Tax Act of 1937, one had to purchase a stamp allowing possession, and the government had no intention of issuing any stamps; therefore, all marijuana was illegal (Trujillo, 2011, p. 15).

The Marijuana Tax Act of 1937 passed with little fanfare and with just one opponent and one proponent speaking. The entire debate lasted less than 2 minutes, after which the Marijuana Tax Act, which mislabelled marijuana as a narcotic, was passed. The names of those who voted for or against the Act were not even recorded (Levinson, 2002, p. 19). Zimring (1992, p. 79) and Reiman (n.d., p. 109) note that the lack of front-end friction in the passing of the bill coupled with the absence of debate during its passage suggests marijuana was only being used by small portions of fringe elements in American society, and was not the widespread public menace that the FBN would have had Congress believe. Anslinger had used the political connections he had fostered in his time as a Prohibition agent to good effect during his campaign to pass the 1937 Act, because he managed to enlist the support of many prominent societies including the Anti-Salon Club, the Women's Christian Temperance Union and the Federation of Womens Clubs, focusing on the danger marijuana was to school children (Musto, 1999a, p. 14). It may be that the effect of the scare tactics used to pass the 1937 legislation (Wisotsky, 1990) was to "ruin any chance of seeing the drug issue as anything but black and white, good and evil" (Reiman, n.d., p. 109).

During WWII, any expenditure that was not seen as being directly related to the war effort was slashed to the bone, and it looked as though even the FBN may have been in danger of being swallowed up by other agencies; however, Anslinger was able to successfully link marijuana use and possession to draft dodging (Erlen and Spillane, 2004, p. 78), and this astute move saved the agency. In the post-WWII environment under the direction of Harry Anslinger, the FBN moved away from using racial fears to institute and to uphold harsh drug laws, and instead tied drug use to the Communist agenda. This political ideology, known after the fact as "Drug McCarthyism" (Blackman, 2004, p. 37), required little in the way of verifiable statistics to justify draconian drug laws. The Daniel Subcommittee of Senators 1956 stated, "subversion through drug addiction is an established aim of Communist China" (Blackman, 2004, p. 37). During the 1950s, "a spy was behind every tree and a narcotics peddler right behind him … The two sinister characters behind the tree were perceived to be one and the same" (Bonnie and Whitebread, 1974b, p. 209).

The reality of the situation was that marijuana and other drug use was still relatively low, and drugs were only used by people in the fringes of society, such as the emerging beatniks. During the 1950s, drug use was seen as unpatriotic, with some experts predicting use of illicit drugs to be in its "death throws" (Rosenberger, 1996, p. 19).

In 1945, the U.S. Government commissioned the *La Guardia Report*, which rejected two important concepts: 1) the link between marijuana use and violent insanity; and 2) the "gateway theory" that marijuana use leads to the use of more potent substances such as heroin (Blackman, 2004, p. 18). Anslinger successfully discredited the report, writing it off as being produced by "self-styled experts, bleeding hearts, axe-grinders, and meddling do-gooders" (King, 1972, p. 71). The FBN came down so hard on the study that it forced the American Medical Association (AMA) to withdraw its original approval of the report (Bonnie and Whitebread, 1974b, p. 201). This about-face was indicative of the FBN's reaction to anyone questioning the drug propaganda that it was producing.

While marijuana and narcotic use were still in their infancy, the issuance of penalties for possession and distribution increased dramatically. In legislation reminiscent of Anslinger's recommendations to strengthen the Volstead Act, the 1951 Boggs Act was passed. It required a minimum 2-year prison term for possession of any amount of marijuana, a provision that Anslinger believed to be "the single most effective deterrent to violation of drug laws" (Erlen and Spillane, 2004, p. 84). The passing of the Boggs Act 1951 was seen as the final nail in the coffin of drugs as an issue, as the FBN thought "the whole United States might be made too hot for drug-peddlers" (Erlen and Spillane, 2004, p. 89). Those few that opposed the Act thought the collateral damage of such indiscriminate legislation, while catching a few of the guilty, would inflict a disproportionate amount of damage on the innocent (Erlen and Spillane, 2004, p. 88).

The passing of the Boggs Act 1951 was the zenith of Anslinger's career, and subsequently, his approach to narcotics control started to lose credibility as larger sections of the population came into contact with marijuana, prompting demands for a re-evaluation of drug policy (Musto, 1999a, p. 238). As Anslinger's career began to wane, reports by the American Bar Association (ABA) and the AMA, as well as W.G. Eldrides's *Narcotics and the Law*, promoted a more nuanced

view of drug policy. The counter-culture was growing rapidly, and scare tactics, which had been so successful at curbing drug use up till this point, were no longer the ticket. In 1962, Anslinger retired, not long after the election of John F. Kennedy, and he was succeeded by Harry Giodano, a pharmacist who was considered, in terms of policy, "much more reasonable" (Musto, 1999a, p. 238).

Harry J. Anslinger is often portrayed as a racist moral crusader who seized the opportunity during the Depression to grow his FBN ambitions by grossly exaggerating the links between marijuana use and violent maniacal crime, especially crimes committed by ethnic minorities. He used the lobbying contacts he had acquired during his time as a Prohibition officer to good effect, and masterfully tied drug use to the war effort during WWII and to Communist subversion in the post-war era. His legacy of scare tactics and harsh penalties override education and rehabilitation and continue to dominate the drug policy narrative, both domestically and internationally.

On the other hand, drug use was at an all-time low during Anslinger's 3-decade tenure as Commissioner of the FBN, and while it is doubtful he fully believed all of the propaganda that his bureau produced, it could be argued that his approach was warranted on an 'ends-justify-the-means' basis. The charge that he exaggerated the drug threat in order to grow his bureaucracy and to increase his personal power in the government seems doubtful, as he prided himself on never asking for an increase in funding for the FBN (Musto, 1973, p. 234). Towards the end of his tenure, when drug treatment clinics were being more widely discussed, Anslinger did all he could to prevent them, even though their institution would have caused a massive increase of the size and budget of the FBN. In the end, Anslinger seems to be a product of the Progressive and Prohibitionist era. A man who saw morality in black-and-white terms, Anslinger definitely classed recreational drug use as morally wrong. He was a shrewd politician who knew how to attach his solution to the popular problem of the day. His heavy-handed approach kept a lid on substance abuse, yet it is doubtful he could have done anything to stem the explosion of drug use that occurred in the 1960s, and the legacy he left was a generation with grave distrust in what the authorities had to say regarding any drug, especially once they saw the wild

disparity between what smoking marijuana really produced, and the outlandish propaganda peddled by the FBN.

The John F. Kennedy and Lyndon B. Johnson Era

Harry Giordano replaced Anslinger as head of the FBN in 1962, and he continued to advocate a law enforcement approach to drug abuse, yet his abilities as a bureaucrat were not as honed as Anslinger's. Before the end of the decade, the FBN would be no more. Musto (2002a) attributes this demise to the bureau's inability to adapt to the tumultuous social changes that were occurring. By refusing to engage with new ideas on how to deal with drug abuse (Musto, 2002a, p. 6) and by continually referring to their previous 3 decades of success, the FBN identified itself as an outdated organisation incapable of moving forward into the optimistic "Great Society" that was being envisioned by U.S. leaders in the early 1960s.

Weeks before the assassination of John F. Kennedy, a comprehensive study on drug abuse and its effects on America, produced by the Prettyman Commission, was completed and was ready to be published. It had been commissioned by the President as one of his first orders of business and was characterised by a three-prong approach to tackling the growing problem of drug abuse (Musto, 2002a, p. 1). In brief, these approaches were:

1. A balancing of approaches between viewing the problem as a criminal justice issue *as well* as a public health issue (this opened the door for the increase in harm reduction strategies).
2. A reorganisation of the bureaucracies involved in narcotics (the implementation of this idea saw the end of the FBN).
3. Diplomatic efforts to reduce illegal drug supply from foreign nations (the first expression of this idea involved financial loans to Turkey in order to get poppy farmers to change to different crops).

While the *Prettyman Report* (1963) was not the first of its kind (the *La Guardia Report* [1945], for instance, relied on similar principles), it found far greater traction than its predecessors, because it was released when Great

Society thinking was very much in political vogue and as the persuasive power of the FBN was declining. The report did receive criticism from the Treasury Department, which cited the proven track record of the FBN and its almost exclusively criminal justice approach to drug abuse (Musto, 2002a, p. 14). The *Prettyman Report* (1963) also received criticism from liberals such as W. B. Eldridge, author of *Narcotics and the Law* (1962), who, quite accurately, pointed out that "without examination, without explanation, the commission has, for most purposes, equated drug use and drug abuse" (Musto, 2002a, p. 8). Public response to the report, however, was "extremely favourable" (Musto, 2002a, p. 12). Part of the reason for the greater impact realised by the Prettyman Commission was that it was willing to look at new and innovative ideas of dealing with the issue of drug abuse, yet its ideas were still based on moral foundations condemning drug use. Musto (2002a, p. 9) illustrates the importance of the Commission's contribution: nearly all its recommendations found expression in one form or another in federal policy over the next four administrations and were adapted under later presidents; many are discernible in today's revised policy statements.

In line with the Prettyman Commission's emphasis on balancing a criminal justice with a public health approach, Congress passed the Narcotics Addicts Rehabilitation Act (NARA) 1966, which specified narcotics addiction as a mental illness (Rosenberger, 1996, p. 20). Its original intent was to reform mandatory minimum sentences that had been put in place under the Boggs Act in the 1950s, but by the time NARA was ready to be passed, there was considerably more political pressure to be seen to be tough on crime. Consequently, the Act was unable to be passed in its original form (Musto, 2002a, p. 18).

While laws were changing slowly and starting to engage with the idea of drug abuse as a public health issue, public perception was changing far more quickly. The Johnson Administration experienced what Bonnie and Whitebread (1974c, p. 223) referred to as the *disintegration of the marijuana consensus*. As already eluded to, the loss of a single strong anti-drug voice in the form of Anslinger had helped clear room for the growing number of elite voices that were questioning the effectiveness of simple punitive measures and their moral

and constitutional validity. The *Prettyman Commission Report* (1963), being well received, signalled the beginning of this sea change. Genuine debate in elite policy circles focussed on whether addiction was a crime or a disease, a moral failing or a misfortune (Musto, 2002a, p. 6). What was truly unique about the mid-1960s was that for the first time in American history, drug use was advocated by outspoken practitioners from the middle and upper-middle class (Jonnes, 1996, p. 238). For example, the likes of Timothy Leary and Richard Alpert vehemently advocated the use of psychedelics and saw them as the gateway to the next step in human evolution (Jensen and Gerber, 1998, p. 12).

While differing opinions were being considered in policy circles and in ivory towers, it was the massive increase in marijuana use, especially by the young middle class, that was the most important factor in bringing about the downfall of the anti-marijuana consensus. In the late 1950s, marijuana arrests and seizures were at an all-time low (Musto, 2002a, p. 24524), but these infringements grew steadily through the 1960s until marijuana use rates exploded in 1967, prompting *Life* magazine to state, "almost overnight the U.S. was embarked on the greatest mass flouting of the law since Prohibition" (Musto, 2002a, p. 26). Between 1965 and 1970 arrests for marijuana offenses rose from 20,000 to 190,000 (Slaughter, 1987, p. 420). Rather than being a substance associated with Black jazz musicians and Mexican migrant workers, middle-class Americans were either smoking pot, or knew people who were. As university campuses around the country became epicentres of drug use, public opinion turned away from locking up bright young university students for what was increasingly being seen as low-risk behaviour. The propaganda peddled by the FBN under Anslinger now had the opposite, unintended effect of discrediting all cautionary voices. The Baby Boomers went to university and adopted the position they voiced in an aphorism — "don't trust anyone over 30". This position was strengthened when the majority of users found marijuana to be a relatively mild intoxicant, with no sign of the violent Communist undertones supposedly connected to it arising. Marijuana use became an act to symbolise one's alternative political, cultural and religious views (Musto, 2002a, p. 1), while simultaneously being seen by the WWII generation as symbolising an attack on cherished American values (Levinson, 2002, p. 2). Every generation has a certain

desire to reinvent their culture, but no American generation before, or possibly after, the Baby Boomers had more money or more free time (Levinson, 2002, p. 20), which combined with an unparalleled level of optimism that society really could be reinvented.

Even with the exponential increase in drug use (32% of university students had smoked marijuana by 1969), only 3% of the population saw drug abuse as one of the more important domestic issues, with racial tension, student unrest and inflation ranking substantially higher (Musto, 2002a, p. 38). While the charge can certainly be laid that later presidencies used the drug issue as a political football in order to galvanise support for issues unrelated to drug use, the Johnson Administration really did preside over a time of massive increases in drug use, violently shifting cultural and political movements, and for the most part, White House bureaucrats were playing catch-up in trying to create a coherent drug strategy. It was not until Nixon and his War on Drugs that a President really tapped into the political windfall that came with being seen as the leader who was "tough on drugs".

President Nixon

Towards the end of the 1960s, Richard Nixon and his campaign team were looking for an issue that would mobilise their voting base. To "Middle America" (the middle class), it felt like things were spiralling out of control, both domestically and internationally, and Nixon's planners fell on the issue of tougher drug sentences as a way to discredit the Great Society programmes (Musto, 2002, p. xviii) and to gain the law-and-order vote.

> Drug control bills offered the opportunity for politicians to express concern for the poor and the wretched (narcotics addicts) and for middle-class youth, whose misguided but understandable attempts at rebellion required both compassion and correction, while simultaneously lowering the boom on criminals. (Musto, 2002a, p. 59)

Before Nixon waged a campaign to increase the public visibility of drug abuse as the major problem facing the nation, polls showed that 1% of the population saw it as the most important issue (Musto, 2002a, p. 59). Crime, the war in Vietnam and escalating domestic unrest were, however, seen as major election issues, and the genius of the Nixon campaign team was that they were able to connect all these issues to that of drug policy. Most of Nixon's planners tended to accept intuitively that there was a connection between drug use and crime, but even those who were not so sure did see the political potential of the issue. "The logic of the relationship between drugs and crime was easily communicated to the public, and the desirability of eliminating such a pernicious habit seemed self-evident" (Musto, 2002, p. xviii).

It seemed that dealing with the problem of drug abuse was far less complex compared to the international disputes and domestic social issues that defied concrete political answers and results. To Nixon's planners, tackling drug abuse seemed like a definitive move that they could make to halt the loss of traditional American values, and to ensure that their political party would reap the rewards for having done something (Musto, 2002a, p. 42). Part of the appeal of tackling the drug issue was that it would win support from Democratic, middle-class working White families, who saw their own party as leaning too far towards the student protestors and young African Americans (Jensen and Gerber, 1998, p. 12).

Upon the election of President Nixon in 1968, the counter-culture was reaching its zenith. With the 1970s producing music and art festivals such as Woodstock and massive Vietnam War protests, high-profile celebrities and counter-cultural heroes were also overdosing with disturbing regularity. Nixon's first attempt at drug control focused on the supply issue, with the advent of Operation Intercept, which aimed to stop the tons of marijuana that were crossing into the U.S. from Mexico. However, the operation was poorly planned, as inspecting every vehicle that crossed the border essentially shut off cross-border trade, with a 70% reduction in U.S. tourist dollars making it to Mexico, while produce coming up to the U.S. from Mexico rotted in the long queues created by the border crackdown. Within a month, Operation Intercept was substantially scaled back and was relabeled Operation Cooperation. During this

short time of decreased marijuana supply from Mexico, Columbia took up the slack, and domestic production also increased to satisfy demand (Rosenberger, 1996, p. 22).

For all the dubious motivations behind Nixon and his planners' drive to raise drug abuse as a major national issue, they did produce a coherent, if imperfect, approach to drug policy. The federal anti-drug budget grew 4-fold from 1970 to 1974 (Sharp, 1992, p. 540). As part of the government response, more than a dozen federal agencies were shaken up in order to better deal with the perceived problem (Musto, 2002, p. xviii). While the rhetoric of the War on Drugs was conservative and somewhat simplistic in nature, the actual applications funded by increased budgets were far more left-leaning and harm reductionist than ever before (or after). Under Nixon, the ratio of treatment and rehabilitation spending to law enforcement spending increased from 0.78 to 1.75 (Sharp, 1992, p. 541).

As the fight for his second term in office was coming nearer, Nixon's planners realised that they needed some way to claim concrete victories, such as reduced crime or successes in dealing with the problem of returning, drug-addicted Vietnam War veterans. The need for quick answers to these tough issues led to possibly the most out-of-character drug policy implemented in recent U.S. federal history, that of methadone maintenance. A report identifying the major issues of the 1972 election stated:

> In 1972, citizens will be looking at crime statistics across the nation in order to see whether expectations raised in 1968 have been met. The federal government has only one economical and effective technique for reducing crime on the streets — methadone maintenance. (Musto, 2002a, p. 88)

The lure of methadone as a silver bullet for reducing crime was part of what made the approach attractive, yet it was the alarmingly high amount of drug-using servicemen returning from Vietnam that demanded an approach other than that of harsh punitive measures. Historically, drug-using groups had tended to be a specific ethnic minority and had tended to be poorer; thus, it was

easier to marginalise drug users as an outside minority. The problem with such high levels of addicted servicemen was that the government could not write them off as a group lacking in moral fibre that could be left to overdose or to be locked up (Musto, 2002a, p. 91). This scenario forced officials to believe that drug addiction was curable, and that it was not solely connected to moral failure. The "once and addict, always an addict" thinking that had been inherited from the Anslinger era needed to be rethought, as America's best and brightest returned from Vietnam with addiction problems. Estimates from an Army psychiatrist suggested that 70% of his unit's patients were heavy users of drugs and that between 50% and 80% of Army personnel in Vietnam had tried marijuana (Musto, 2002a, p. 50). Another drawcard to the harm reduction approach was that while methadone was, in its own right, a highly addictive substance associated with painful withdrawal symptoms, any heroin addict who could be put on a methadone programme could be omitted from estimates of the social costs of drug addiction (Rock, 1977, p. 157), thus making the statistics on drug use look much for favourable to a voting nation in 1972. Nixon was re-elected by the second greatest margin in U.S. history, and Musto (2002a, p. 106) contends that "the administration's approach to law and order issues in general and to drug abuse and related crime in particular played a part in the victory."

While there were great changes taking place in the treatment of heroin addicts, the National Commission on Marihuana and Drug Abuse (NCMDA), named the Shafer Commission after its Chairman Raymond P. Shafer, was busy releasing its findings. The rhetoric of Nixon's 1973 campaign of being tough on crime and drugs did not gel well with the members of the Shafer Commission, which did not go as far as to suggest legalisation of marijuana, but did call for its decriminalisation (Slaughter, 1987, p. 423). *The Shafer Commission Report* (1972) was well-researched and well-written, but the timing for its release was unfortunate, as it did not coincide with Nixon's re-election rhetoric (Musto, 2002a, p. 113). In its report (1972), the Shafer Commission dismissed the link between marijuana use and violent crime and questioned the validity of the gateway theory, which held that marijuana use led to the use of harder drugs (Slaughter, 1987, p. 423). Furthermore, the Commission lamented the fact that "marijuana's symbolism remains so powerful, obstructing the emergence of a

rational policy" (Slaughter, 1987, p. 424), and President Nixon was left with no choice but to distance himself from the report's findings. While the Shafer Commission was not given a great deal of respect when the report first came out, it was extremely influential when decriminalisation of marijuana was subsequently mooted under the Carter Administration.

Nixon and his planners were undoubtedly concerned by the increase in drug abuse that occurred in the 1960s, but also saw the increase as a political opportunity to win the law-and-order vote in 1969 and as a way of showing concrete, positive results, which helped them win Nixon another term in 1973. They took the issue seriously and constructed a coherent strategy to deal with the drug abuse problem, which they dubbed the War on Drugs. While it has been criticised as an overly simplistic approach, they did try some innovative strategies such as their methadone maintenance programme. It was not until President Reagan took office that the U.S. saw a truly supply-side war waged, and with devastating consequences. Nixon's legacy, however, was not the result of his cutting-edge harm reductionist approach, but was based on his black-and-white War on Drugs rhetoric, which is still the prevailing paradigm for U.S. drug policy today. The Shafer Commission, which dealt primarily with marijuana policy, was essentially ignored by Nixon, as it would not have been politically wise for him to align himself with its findings right before the election. The report did, however, become far more important later in the decade when liberalising marijuana policy became a real political possibility.

Kingdon's Policy Windows Model

John Kingdon's book *Agendas, Alternatives, and Public Policies* (1984, p. 1) attempts to paint a clear picture of the phenomenon of an "idea whose time has come". In Kingdon's view, items quickly appear on the legislative agenda, sometimes seemingly out of nowhere, only to disappear and never to return, while other issues remain on the periphery for decades, intermittently being thrust onto centre stage, to either be dealt with incrementally or to be solved once and for all by sweeping new legislation. Through his theory, Kingdon (1984) attempts to understand the processes that push an issue into politicians' decision agendas. He supposes that in order for an issue to gain serious consideration by government, three streams must simultaneously converge (Kingdon, 1984); these streams are mostly independent of one another and cover the three areas of 1) problems, 2) policies and 3) politics. Kingdon's (1984) contention is that only once a set of criteria for each of these three categories has been satisfied, may an issue rise to the top of politicians' agendas to be considered in the legislature. Kingdon (1984, p. 174) refers to this occurrence as a "policy window", noting that these windows do not stay open long before another issue comes to the fore. The following section outlines the key components to Kingdon's (1984) theory and examines examples in the academic literature in which his theory has been applied to real policy issues, both current and historic. The following section also discusses the methodological approach appropriate for applying the policy windows theory to federal marijuana policy in the 1970s.

The Three Streams

The Problem Stream

The *problem stream* consists of any issue that could be dealt with legislatively. However, most of these issues never make it onto the formal agenda, and not necessarily because of a lack of merit. Kingdon (1984) asserts that certain problems are recognised above others via three channels — *indicators*, *focusing events* and f*eedback*. The first way of recognising a problem is by its indicators. These are regular statistics that provide information concerning the gravity of the problem and that include telling facts such as road toll numbers, Drug

Enforcement Agency (DEA) drug seizure figures or infant mortality rates. Kingdon (1984) notes that these figures can be mere blips in the data and that these anachronisms are not necessarily indicative of the gravity of the problem; however, Kingdon (1984) also acknowledges that a statistical anomaly can cause more attention to be given an issue than is necessarily warranted. "The countable problem sometimes acquires a power that is unmatched by problems that are less countable" (Kingdon, 1984, p. 97).

Specific events that push an issue to the top of the problem stream are labelled focusing events and can take the shape of a crisis, disaster or the personal experience of a policy maker (Kingdon, 1984, p. 100). Kingdon (1984, p. 104) also notes that focusing events can have a cumulative effect, giving the example of airline safety being thrust far higher in the problem stream by two airline crashes in quick succession than by two aviation disasters separated by a year or two. Focusing events have a greater potential impact on some problems; for example, while the annual number of deaths on the road far exceeds that of airline crash fatalities, 100 simultaneous casualties caused by a single plane crash will have a greater focusing effect than 100 highway deaths over a number of weeks.

Feedback comes to legislative officials through a number of different channels ranging from formal channels, such as systematic monitoring and evaluation, to more sporadic channels such as letters of complaint (Kingdon, 1984, p. 106). Feedback tends to have a cumulative effect on a problem, and if enough feedback is received, then it may help push the problem to the top of the stream.

Fading Problems

The problem stream can be very turbulent, and an issue may quickly rise to the top of the stream, only to be dunked back into relative insignificance by another problem that has gained the limelight through feedback, indicators or focusing events. Kingdon (1984) notes that "it takes time, effort, mobilisation of many actors, and the expenditure of political resources to keep an item prominent on the agenda" (Kingdon, 1984, p. 109); hence, it is unusual for a problem to stay on the political agenda long enough for serious consideration. Indeed, a problem

may also fade once legislators perceive that is has been dealt with by the legislature, even if in a piecemeal, haphazard way. This is the reason some policy entrepreneurs would rather see no legislation passed at all, and would rather keep their problem near the top of the stream, rather than accept a watered-down version of the solution and risk their movement losing steam.

The Policy Stream

The *policy stream* is the caucus where solutions to problems are created. This stream is fragmented, as it consists of many "policy communities" that harbour differing ideas as to the best legislative solution (Kingdon, 1984, p. 127). Within the policy stream, there is a great deal of freedom to propose solutions that are 'outside the box'. In order for a policy to rise to the top of the stream, however, it must gain enough momentum from a number of different angles, as spelled out by Kingdon (1984). Firstly, *policy entrepreneurs* bide their time and wait for a problem that they can attach their pet solution or policy to. A solution is more likely to rise to the top of the policy stream if it has talented entrepreneurs championing its effectiveness. Kingdon (1984) also notes that it is not all about the power of the entrepreneurs who are pushing the solution, but that the merits of the solution also have an effect. Political scientists are often fixated on the effects of special interest groups and vested interests, but Kingdon (1984, p. 131), rather refreshingly, asserts that *good ideas* are more likely to rise than bad ones

Technical feasibility is another factor identified by Kingdon that affects whether or not an issue will rise above others in the policy stream. If the finer details are not worked out before legislative debate, a sound solution may be sunk due to an embarrassing oversight by the entrepreneurs pushing the legislation (Kingdon, 1984, p. 134). A solution must also line up with the values held by the policy community. Kingdon (1984, p. 140) calls this *value acceptability,* and no matter how effective the solution may seem to be, if it does not fulfil this criterion, the solution will likely not rise for consideration.

Along the same lines, but requiring mass value acceptability, is the idea of *public acquiescence* (Kingdon, 1984, p. 146). In this domain, solutions that go against public opinions are less likely to be considered. The problem and policy

streams operate relatively independently of one another, yet Kingdon (1984) notes that "the chances for a problem to rise on the decision agenda are dramatically increased if a solution is attached" (Kingdon, 1984, p. 150). If a solution ticks all the aforementioned boxes such as technical feasibility, value acceptability and public acquiescence, then it is far more likely to rise to the top of the policy stream.

The Political Stream

In order for an issue to rise to the top of the decision agenda, it must not only be seen as problem that has a viable solution, but it must also be politically expedient for the seasoned politician to tackle. The political stream consists of such elements as *public mood*, *election results*, *changes in administration* and *referendums* (Kingdon, 1984, p. 152).

Kingdon believes that *national mood* has a significant bearing on whether the issue in question will make it to the decision agenda. While he admits that national mood is a hard concept to define, and questions whether it is even possible to gauge such a thing, the reality is that those in power do believe they can sense what the mood is and do factor it in when making decisions on whether or not it is an appropriate time to push for change (Kingdon, 1984, p. 154).

The balance of power regarding *organised political forces* is another factor determining the likelihood of an issue finding its way into the decision agenda. If strong forces, such as lobbies or interest groups, are against a solution that has risen through the policy stream, it is less likely to hit the decision agenda. As one of Kingdon's interviewees stated, "if too many people get angry, it's not worth it" (Kingdon, 2011, p. 151). Indeed, politicians do not want to expend more political capital than is necessary and may wait until political forces are more in favour of a solution before they move.

Government in the political stream includes changes in administration, changes in Congress and appointments to key positions within major bureaucracies (Kingdon, 1984, p. 160). For example, with a change in administration, the first 100 days is seen as a time when certain solutions will gain far greater traction. *Questions of jurisdiction* play a part in the political

stream, as some bureaucracies are expected to take a certain stance on an issue, and if they take the opposite stance, it can push the issue closer to the top of the decision agenda. Kingdon (1984, p. 163) gives the example of airline deregulation, when the head of the Civil Aeronautics Board stated that there should be less airline regulation, which was effectively introducing the idea that he and his bureaucracy wielded too much power. This statement made deregulation more politically viable and played a role in deregulation legislation being passed.

When an issue finds itself at the top of all three streams (the problem, policy and political streams), it is likely that it will be pushed forward to the decision agenda. In applying the policy windows model, the present research endeavours to shed some light on what forces pushed marijuana policy reform and what forces kept it in check. The following section outlines some of the key academic literature relevant to the application of the policy windows model to a variety of problems in the U.S. political setting.

A Theory Between Clouds and Clocks

In choosing a political theory to help explain historical phenomena, it is useful to keep the enquiry simple by focusing on why things happened the way they did. In this scenario, it is pertinent to know why more liberal feelings/attitudes towards marijuana, both in general society and in policy circles, did not result in the liberalisation of federal marijuana laws under Ford and Carter.

An appropriately chosen theory will help answer this question and will be able to shed light on what is likely to happen in the future. When choosing a theory to explain the agenda-setting process, formal academic enquiry is very much a balancing act between being specific but not omitting factors that affect the political realm. This balancing act also demands enquiry that is not overly broad, thus leaving no way to make comparisons between issues, political systems, or time periods in history. Political scientists Almond and Genco tackled this issue by analysing the work of philosopher Karl R. Popper (1965), *Of Clouds and Clocks: An Approach to the Problem of Rationality and the Freedom of Man,* and then applying its logic to their discipline. In his central metaphor, Popper (1965) identifies precise and predictable systems such as precision clocks,

motorcars, and pendulums as examples of the "clock" end of the spectrum, while he identifies less obviously structured systems such as weather fronts or swarms of insects as examples of the less deterministic "cloud" end of the spectrum. Human societies fall somewhere between these extremes, but are more likely located more towards the cloud end of the spectrum (Almond and Genco, 1977, p. 489). In order to understand human behaviour, a model is needed that lands somewhere between perfect determinism (clocks) and perfect chance (clouds). In their article, "Clouds, Clocks, and the Study of Politics", Almond and Genco (1977) warn of the dangers of creating models that are too similar to other scientific disciplines. Indeed, they see that "our longing for full scientific status has led us to a kind of "cargo cult" fashioning cardboard imitations of the tools and products of the hard sciences in the hope that our incantations would make them real" (Almond and Genco, 1977, p. 504).

In striving to find the ever-elusive independent variable, the political science discipline has often forgotten that "memory, learning, goal-seeking, and problem solving intervene between cause and effect, between independent and dependent variable" (Almond and Genco, 1977, p. 492). Albert Hirschman echoes this sentiment in his book, *A Bias for Hope*, where he calls social scientists to remember the "multiplicity and creative disorder of human endeavor" over and above stressing regularities and stable relationships (Hirschman, 1971, p. 27). Almond and Genco (1977) come to a similar conclusion that trying to understand politics through models that are deterministic is inappropriate and that the discipline has lost some of its explanatory power in its desire to emulate other hard sciences. They assert that "in 'good' science methods are fit to the subject matter, rather than subject matter being truncated or distorted in order to fit it to a preordained notion of 'scientific' method" (Almond and Genco, 1977, p. 510). Kingdon's (2011, p. 223) later revision of his work identifies Almond and Genco's application of Popper's clouds and clocks metaphor as the basis for the policy windows model, and he notes that "one of the major recent developments in the natural sciences, chaos theory, concentrates on just such fluid processes". With this being the case, the methodological application of policy windows to the question of why the era of liberal drug policy under Carter and Ford did not result in federal legislative change appears to be more than appropriate.

Kingdon (2011) did attempt to apply a quantitative methodology to his model by looking for measures of agenda status thorough congressional hearings and committee reports, presidential messages including state of the union addresses, public opinion polls and entries in the *New York Times* index, but he found that "hearings and reports data are not a great deal of help in measuring the prominence of an item on the agenda" (Kingdon, 2011, p. 261). A problem with using a defined data set, such *New York Times* articles or state of the union addresses is that the full breadth of the policy windows model remains untapped. On one hand, it is prudent to avoid a scenario in which information is pulled at random from any source. This is certainly not an easy methodological issue to solve, yet with an issue as emotionally charged and diverse as drug policy, it would seem prudent to err on the side of clouds rather than clocks. For example, in the epilogue of the 2011 edition of his book, Kingdon uses his model to compare and contrast health care reform under President Clinton with health care reform under President Obama, and having taken into account the factors identified in each of the three streams, Kingdon does a masterful job of explaining why health care reform failed under Clinton, but was likely to succeed under Obama. It is this exact application method of Kingdon's (2011) model that I will apply to the question of why marijuana law reforms failed under Ford and Carter.

Applications of Policy Windows Theory

Kingdon (1984) originally developed policy windows theory to explain how issues rose to the top of the U.S. federal decision agenda. It has been criticised as a theory because it does not take into account international factors that may affect U.S. domestic policy (Simon and Aim, 1995, p. 460). This could be of concern when attempting to analyse U.S. marijuana policy, as it has strong international links and implications. On the other hand, one scholar suggests that the U.S. takes little notice of international thought when constructing drug policy (Buxton, 2006). Despite these concerns, in their article "Policy Windows and Two Level Games", Simon and Aim (1995) found that policy windows as a theory was useful in explaining the passage of acid rain legislation, which also had an international component to it (Canadian interests were heavily involved). They

found that "Kingdon describes the political process in a way that seems to match the perceptions of our respondents and any others who work in policy-making" (Simon and Aim, 1995, p. 460).

The authors also decided that a change in administration was a key component in opening up a policy window, in line with Kingdon's (1984) original theory, but suggested that policy windows place too much emphasis on a single entrepreneur pushing an issue to the decision agenda, as in the case of acid rain legislation (Simon and Aim, 1995). In fact, the problem, policy and political streams "were not joined by a single entrepreneur; rather they were joined by the combined efforts of many actors in the process" (Simon and Aim, 1995, p. 466). Another application of Kingdon's revised (2011) model can be found in the article titled, "Pollution, Political Agendas and Policy Windows" (Solecki and Shelley, 1996), where it is used to explore the rise of environmental issues to the forefront of the federal decision agenda in U.S. politics in the 1950s. Solecki and Shelley's (1996) contention is that while most environmental historians and policy analysts believe the environment as an issue became prominent only in the 1960s, an application of the policy windows theory shows that it was in the late 1950s that the three environmental problem, policy and political streams started to gain strength and converge (Solecki and Shelley, 1996, p. 451). This successful application of the policy windows framework is particularly pertinent to the current research, as it shows that the theory can be successfully applied by reference to historical records, as opposed to interviews with policy makers. In addition, Solecki and Shelley's (1996, p. 452) analysis revealed how policy windows theory was particularly useful in explaining how New Jersey State legislation was instrumental in propelling pollution onto the federal stage. In fact, this interaction between state and federal government is also relevant with regard to marijuana policy.

Furthermore, in explaining the rise of the "three strikes and you're out" legislation, academics use policy windows theory because "it emphasises the roles of both creativity and chance in the policy-making process, effects that other models attempt to minimise or control"(Saint-Germain and Calamia, 1996, p. 59). As drug policy formation is particularly vulnerable to focusing events, a

theory that allows for creativity and chance in the policy creation process is an important tool.

Kingdon's (2011) revised policy windows model was also applied in an attempt to explain the passage of the "no child left behind"(NCLB) legislation (Jaiani and Whitford, 2011). The researches noted that they did not use the policy windows model to explore the efficacy of the policy, but focused instead on "the process by which NCLB evolved to become the standard unifying framework for American K-12 education" (Jaiani and Whitford, 2011, p. 9). In fact, the Jaiani and Whitford (2011) study relies primarily on Government Accountability Office(GAO) reports and presidential speeches as opposed to interviews with policy makers. In doing so, these scholars have moved beyond Kingdon's original application of the model, a move that sidesteps some of the issues associated with retrospective interviews (Jaiani and Whitford, 2011, p. 15). Indeed, the NCLB legislation was essentially a federalisation of a Texas State initiative to improve education state-wide, and the authors of the NCLB analysis, with the use of the policy windows model, successfully tracked the emergence of an issue from the state to the federal decision agenda (Jaiani and Whitford, 2011).

The policy windows model, as evidenced in the sample of its applications explored in this section, is primarily used to analyse U.S. domestic policy, yet it is also applied successfully in international contexts (Rex and Jackson, 2009; Nelson, 2007). However, Kingdon's (2011) model is criticised for being ill-defined in certain aspects, such as what constitutes national mood, while other political analysts suggest that the whole model is indeterminate and unable to give satisfactory answers as to why some problems make it to the decision agenda (Mucciaroni, 1992, p. 459). With regard to drug policy, one noted author contends that "Kingdon's formulation is so comprehensive and leaves so much room for random elements that a comparative analysis of policy-making processes is impossible" (Sharp, 1994, p. 15). While the critiques by Muccarioni and Sharp are certainly worth taking note of, their preferred approaches land somewhere closer to the hard science (the clock model) end of the spectrum of political science, which for reasons already discussed, this research avoids.

In conclusion, the policy windows framework is a soft science way of holistically approaching the political processes or forces that arise when an issue rises to prominence, and while it provides a framework with which to understand this rise, Kingdon (2011) does not attempt to quantify the weight these different forces will exert on the issue. For example, he does not detail an exact formula that will predict whether a focusing event in the problem stream will overcome organised political forces entrenched in the political stream. The strength of the Kingdon (2011) model lies in its ability to map the political landscape with regard to a specific issue, allowing any political analyst to identify what is likely blocking the issue from making it to the decision agenda, and where the issue has decent support. The three streams approach allows for good and bad fortune in the political realm, without diminishing the important role of the entrepreneur in pushing an issue on to the decision agenda. Consequently, the application of the policy windows model to the potential reform of federal marijuana legislation seems appropriate in the current research.

The Problem Stream During Ford & Carter

Within any society, there is almost an endless list of problems, yet at any given time, only a few will enter the public consciousness. Some problems may stay relatively constant over extended periods, while others can rise and fall dramatically due to cultural or political shifts. Calling upon the policy windows theory, this section explains what forces are at play to elevate a specific problem above others in general, and how the theoretical framework applies specifically to the issue of marijuana use in the U.S. in the 1970s.

Marijuana use grew dramatically during the 1960s and 1970s, and the issue gained a great deal of exposure under Nixon, partly because this spike in drug use warranted a focused response from the Federal Government, and partly because being tough on drugs was a smart political move at the time. As drug use continued to climb during the 1970s, the issue of drug use went through a problem redefinition. Under Nixon, drug use was an enemy to be eradicated, prompting his initiative, the War on Drugs, but under Ford and Carter, a growing recognition that widespread drug use was entrenched in mainstream American society prevailed. Thus, it would be unwise to institute policies that aimed for a drug-free America. Whereas Nixon's administration defined the problem as the *use* of marijuana per se, a more nuanced approach under Ford and Carter regarded marijuana *abuse* as the problem; in fact, bureaucrats under Ford and Carter saw harsh drug laws as equally, if not more harmful, than the smoking of cannabis. Draconian drug laws, rather than drug use, were becoming the new villains. In order to understand what factors were at play to raise the problem of marijuana prohibition within the problem stream during the mid-1970s, I will discuss seven broad categories that make up Kingdon's (2011) problem stream in the following section, with specific reference to the problem of marijuana use and abuse during the 1970s.

Systematic Indicators

Relevant *systematic indicators,* with regard to marijuana use in the U.S., start in earnest with a Gallup poll conducted in 1967, which began tracking marijuana use rates among university students. In 1972, the Shafer Commission conducted a nationwide survey, and in 1975, the annual survey of high school seniors

began, and continues to the present day. These indicators confirmed that there was a marked increase in marijuana use during the 1970s, peaking in 1979, when 60.4% of high school seniors reported smoking pot (Harrison et al., 1995, p. 182), while 68% of adults between 18 and 25 had smoked it in the same year (Slaughter, 1987, p. 424). Marijuana use had made it out of societal fringe groups, including Mexican migrant workers and inner-city Black jazz circles, and had pervaded the White middle class. In the late 1960s and early 1970s, marijuana use by high school students held a positive correlation with subsequent university attendance (Goode, 1970, chapter 2), yet as the 1970s continued, it became clear that the so-called expanded consciousness gained through the use of mind-altering substances was not the utopia that Timothy Leary and his counterparts had envisioned. In fact, as the years rolled by, this positive correlation between pot use and university attendance reversed and became a negative one. Nixon had waged a War on Drugs and had claimed victory in 1972, a claim which was not entirely unwarranted considering the success he had had with reducing heroin addiction through harm reduction methods, such as the methadone maintenance programme; yet, scholars also argued that Nixon manipulated drug use figures in order to make it seem that he had had a greater deal of success than was the reality on the ground, something that became harder to do the longer drug-use rates were recorded (Robinson and Scherlen, 2007).

These *systematic indicators* confirmed that the problem of marijuana use was increasing dramatically, which according to Kingdon's (2011) theory, would help push the issue to the top of the problem stream, yet under Presidents Ford and Carter, the *use* of marijuana was not seen so much a problem as the *laws* governing it. This move to redefine the problem was a manifestation of the battle between two approaches that continues today. The proponents of these two approaches disagree as to whether drug abuse should be tackled through a criminal justice, or a public health paradigm. This aspect of problem definition is discussed later in the problem stream. However, what is unusual about the systematic indicators with regard to marijuana use is that the increase was so immense and was by a total different class of user (the White middle class); thus, these systematic indicators required politicians to change their approach

entirely (Musto, 2002b, p. 219). The increase in marijuana use initially pushed the problem to the top of the problem stream; hence, Nixon's War on Drugs ensued, but as this problem became so overwhelming and infiltrated all sectors of society, it morphed in the politicians' and public's collective mind from a problem to be fixed to a condition to be managed. This change in perception gave pragmatic harm reduction approaches greater popularity, which, up until recently, was unprecedented in U.S. drug policy history.

Reports Produced in the Problem Stream

Non-governmental organisations (NGOs), governmental organisations and academics are often commissioned to write reports in order to shed light on the extent of a particular problem and to give recommendations as to the best course of action. These reports will push an issue up in the problem stream (Kingdon, 2011, p. 91) to varying degrees, depending on the reputation of the body compiling the report and depending on the political environment within which the report is released.

In 1972, the NCMDA issued a report titled *Marihuana, A Signal of Misunderstanding*. This report (1972) was chaired by Raymond P. Shafer, and was referred to after its publication as *The Shafer Commission Report*. The report was released at an unfortunate time, as President Nixon was in full swing with his War on Drugs rhetoric in March 1972 (Musto, 2002a, p. 165), and even if the President, in private, had agreed with the tenor of the report, which among other things, advocated the decriminalisation of marijuana, he would not have been able to have publicly accepted its findings. Having been rejected by the Nixon Administration, *The Shafer Commission Report* (1972) lay dormant for a few years until a more pragmatic approach to marijuana became more politically tenable. Once the view of drug use as an inevitable part of society became more popular, this report started to wield a great deal of power, as it had essentially come from the heart of an administration that was vehemently anti-drug. If a Nixon administration on the warpath against drugs could come up with such liberal drug pronouncements, then there really must be something to a harm reduction approach. Kingdon (2011) notes that if a governmental department makes recommendations that are outside of what it is usually expected, then this

can give the recommendation greater traction. For example, during President Carter's term, the Civil Aeronautics Board (CAB) recommended deregulating the airline industry, a move which limited the size and scope of CAB. This unexpected recommendation, made by an organisation that exists to regulate, gave greater momentum to the deregulation movement (Kingdon, 2011, p. 11). The same factor seems to be at play with regard to *The Shafer Commission Report* (1972) arising out of the Nixon Administration's War on Drugs. Since the report was authored from the political right at a time when the drug war was in full swing, was analysts and onlookers assumed that it would mirror Nixon's public view on drugs. The fact that it recommended a harm reductionist approach meant that the Shafter Commission report received little attention at the time, but became an important weapon for those wishing to decriminalise marijuana later in the decade.

In 1975, the Ford Administration released *The White Paper on Drug Abuse.* In many ways, this white paper reflected the same views as the Shafer Commission's findings, including that Americans should learn to live with some level of substance use, and even abuse (Musto, 2002a, p. 167). The national mood in America was shifting away from seeing marijuana as an evil to be eradicated, and by 1975, 57% of high school seniors saw regular smoking of marijuana as harmless. *The White Paper on Drug Abuse* (1975) captured this shift in thinking:

> For the first time a public presidential document on drug policy eschewed absolutist rhetoric, tried to accommodate increasing social tolerance of drug consumption, and recognized that the 'drug problem' was not monolithic — that different drugs have different effects and pose different risks to their users. (Musto, 2002a, p. 165)

Specific drugs were being seriously looked at in terms of their different effects, as opposed to the traditionally monolithic paradigm in which all drug use was morally reprehensible. This shift in attitude made the discussion of a specific marijuana policy possible, as one did not have to argue that harder drugs, such as

heroin, should be legalised, but just that this one, comparatively benign drug, should be reconsidered in the legislature.

While the content of *The White Paper on Drug Abuse* (1975) and the Shafer Commission publication were both important, they were not the first governmental reports to suggest a more harm reductionist approach. It was that their publication dates coincided with a peak in academic, social and political acceptance of substance use that made the reports harder to ignore and gave them more gravitas when they were cited in front of congressional hearings calling for the decriminalisation of marijuana.

Focusing Events, Crises and Symbols

Kingdon (2011, p. 94) notes that systematic indicators and reports are often not enough to bump a problem to the top of the stream, but that problems often require the accompaniment of some kind of sensational event or symbol that acts as a catalyst (Kingdon, 2011, p. 94). Certainly, with regard to the *closing* of the policy window for federal decriminalisation of marijuana, there are numerous examples of focusing events that bought an end to an era of liberal drug policy, such as the then 'Drug Czar', Peter Bourne being accused of using cocaine at a NORML party. When looking at the *opening* of the policy window, however, no equally dramatic event can be connected to it. The movement towards decriminalisation was more of a slow and begrudging realisation that a drug-free America, especially with regard to marijuana, was a fantasy, and that more realistic policy goals should be instituted.

Kingdon discusses California's Proposition 13 as an example of a legislative *symbol*, which came to embody the general feeling of the time that nationwide, taxpayers were severely resistant to higher taxation and to new, expensive government programmes (Kingdon, 2011, p. 97). A similar symbol for federal law makers may well have been the spate of states that decriminalised, or substantially liberalised, their marijuana laws during the 1970s. Much has been written on whether states act as policy entrepreneurs in leading a reluctant federal government or vice versa, but for the purpose of applying the theory of policy windows to the present discussion, it is enough to say that changes in state law contributed in some way to an increasing awareness at the federal level

that the War on Drugs was losing popularity, and that certain parts of the country at least, were ready for a different approach.

Under the category of focusing events, Kingdon (2011) also discusses *personal experience of a policy maker* as a factor that can drive the passage of an issue to the top of the problem stream. He uses the example of different modes of transportation, and describes how airlines have an advantage over busses, as those involved in formulating transportation policy rarely ride busses but often use aircraft (Kingdon, 2011, p. 97). Certainly, both Presidents Ford and Carter were more publicly accepting of their children's use of marijuana than their predecessors would have been. This could be because, in that cultural moment, many policy makers were coming to terms with the fact that their middle- and upper-class offspring were smoking pot at a historically unprecedented level. It may be no coincidence that this liberal era in drug policy coincides with the moment when middle-class marijuana use was peaking.

Attempts to liberalise drug policy will always be vulnerable to focusing events, because no matter how solid and well-reasoned, a case for liberalisation — if a celebrity dies of a drug overdose or a major drug bust occurs at the crucial moment — is a cause that will be derailed. Liberalising drug policy just does not seem to have the same emotional force as its conservative counterpart, and no matter how coherent the argument for decimalisation is, it will always be vulnerable to conservative backlash.

Feedback

There does seem to be a good deal of overlap between what Kingdon (2011) refers to as *official indicators* and *feedback*, two categories that make up the problem stream. However, monitoring of expenditure, evaluation of programmes, specific complaints and new problems that have arisen as a result of a programme's enactment (Kingdon, 2011, p. 100) are all factors that are included for discussion in this section. Feedback that helped push marijuana prohibition to the top of the policy stream included the mounting cost of the War on Drugs, coupled with the simultaneous rise of drug use across all sectors of society. Kingdon (2011, p. 102) notes that "another type of information that indicates a problem, is a failure to meet stated goals". An example of a failure to

meet stated goals, which had unforeseen negative consequences, was the implementation of Operation Intercept at the start of Nixon's War on Drugs. Initially, every item crossing the Mexican border into the U.S. was examined in order to stop the flow of narcotics. After a couple of weeks, however, the policy encountered strong resistance from industry and commercial interests, as lorries waited in queues and produce often rotted for days at the border, where traffic had been brought to a standstill. Operation Intercept was dramatically scaled back and promptly renamed Operation Cooperation in response to a high volume of feedback in the form of complaints and unanticipated consequences. Indeed, the increasing number of middle-class young people who were finding themselves an unwitting part of the rising prison statistics is another example of feedback that undermined the War on Drugs approach and pushed the problem of marijuana prohibition to the top of the stream.

Kingdon (2011, p. 102) also refers to the rising cost of a programme as a form of feedback that can help gain legislative attention, noting that "sometimes programmes come to be so costly that policy makers rethink future initiatives". In fact, as the emotive high that accompanies declaring war began to subside, the reality of the complex and often counter-intuitive nature of the War on Drugs came back to haunt the Nixon Administration, and to the public reacted through various feedback channels. It was this feedback information that slowly took the wind out of the War on Drugs' sails and opened up the possibility of the drug problem being seen in an entirely different light. Attitudes shifted from viewing drug use as the culprit to viewing unintelligent drug policy as equally to blame.

Why Problems Fade

While sometimes *problems fade* due to political manipulation or due to a loss of currency, "we should not lose sight of the fact that government programmes sometimes actually do accomplish fair portions of their objectives" (Kingdon, 2011, p. 103). With regard to drug policy in the post-Nixon War on Drugs era, it is hard to argue that the problem lost prominence because of the success of the War on Drugs, however. Kingdon (2011) also notes that a problem can fade, not because it is solved, but because legislators feel they have dealt with it adequately, regardless of how effective the proposed solution actually is

(Kingdon, 2011, p. 103). While it may have been somewhat misleading for Nixon to proclaim he had "won" the War on Drugs, the best course of action seemed to be to claim victory and to hope the issue would lose prominence, which it did for a good number of years. During this time, the problem of marijuana *use* morphed into the problem of marijuana *prohibition*. It was really not so much an example of a problem fading, but of a problem being redefined as a condition to be managed.

Elaine B. Sharp (1994, p. 16) contends that according to the inside access model of agenda setting, it would be far easier to achieve liberal legislative changes on drug policy if the issue was kept *out* of the limelight. This view has some legitimacy and could account for why there was far less press coverage of the drug problem during the time of liberalisation. Indeed, government advocates with more liberal drug policy leanings realised that the best way to achieve their goals was to keep a low profile and to keep the issue out of the media.

Budgets

Budgetary concerns have a sizeable bearing on whether an issue is likely to receive legislative attention, but there is almost no proposed initiative that would not claim that, in the long run at least, the nation would be better off economically if the problem were to be tackled in a certain way. In the 1970s and 1980s, while liberals bemoaned the amount spent on the drug war and incarceration, conservatives, especially under Reagan, pointed to the opportunity cost of drug use, claiming that drugged workers were costing the nation untold millions of dollars in unproductive hours; thus, the money spent on keeping drugs out of the nation and workplace was actually a form of investment.

Proposals that cost little on their own terms, or that hold promise as methods for controlling rising costs, tend to make it higher in the problem stream during times of budgetary constraint (Kingdon, 2011, p. 107), and in the mid-1970s, the problem of marijuana prohibition ticked both these boxes. Cost saving due to fewer resources required by law enforcement, and the possibility of new tax revenue, gave marijuana law reform increased impetus.

While the national budget does have a great impact on what problems make it to the legislative agenda, there are certain issues with such great emotional power attached to them that "policy makers simply ignore the budget" (Kingdon, 2011, p. 109). Kingdon (2011, p. 109) uses the example of the kidney dialysis programme, stating that "politicians found that the moral inequity created by having this dramatic life giving therapy available to some but not all was simply intolerable". The programme became incredibly expensive, and the advantages did not really justify the expenditure, but it was an issue that had captured the emotions of the legislators, and therefore, it was passed by Congress. Liberalising drug laws does not occupy the same moral high ground, and does not yield the same force of emotion that stricter drug laws can draw on; therefore, liberalisation is always vulnerable to a conservative political entrepreneur who wants to roll back liberal reforms. Budget constraints can push the prohibition of drugs to the top of the problem stream in times of economic hardship as an issue to be dealt with by disbanding prohibition efforts, but the idea of dealing prohibitionists a blow can equally easily be sunk, thanks to the emotional force that the institution of strict drug laws can draw on.

Problem Definition

Whether an issue gains legislative attention can often hinge on how that issue is perceived in the minds of policy makers. Kingdon (2011) asserts that problems that either do not have a solution or are seen as problems *not fit for government intervention* are seen as conditions rather than problems. Issues can also switch categories, because "conditions become problems when we believe we should do something about them" (Kingdon, 2011, p. 109). Kingdon (2011) uses the example of poverty, which, if viewed through a liberal lens, will inspire initiatives such as the Great Society programmes of the 1960s, whereas if viewed through a conservative lens, the issue of poverty will cause legislators to focus more on personal responsibility and in reducing red tape that impedes those who wish to work hard and succeed. Thus, in the hands of conservatives, the issue of poverty prompts little, or no legislative action (Kingdon, 2011, p. 110).

In the 1970s, the issue of marijuana use went through a period of redefinition. From being seen as a crime to be eradicated to becoming an

inevitable part of the culture that should be managed rather than removed, this sea change in attitude defined the decade. Under Ford, *The White Paper on Drug Abuse* (1975) started to take a more harm reductionist approach; authors began using words such as "minimise" as opposed to "eradicate". Furthermore, they stated that "we should stop raising the expectation of total elimination of drug abuse from our society" (Baum, 1996, p. 86). President Carter's midterm strategy echoed this sentiment and plainly iterated that drug abuse was entrenched in American society. Carter's midterm strategy also mooted the idea that the U.S. Government did not have the capacity to stop illegal drugs from crossing the border, but that leaders could "bring together the resources of the Federal Government intelligently to protect … society and those who suffer" (Baum, 1996, p. 96). A factor that may well have helped facilitate this change in approach to drug policy was that middle-class youths were being imprisoned for possession and personal use of marijuana at a heretofore unprecedented rate, and this trend was increasingly being seen as an inappropriate and disproportionate response (Musto, 2002a, p. 192). Kingdon (2011) suggests that when what is traditionally seen as a condition is redefined as a problem, legislative change is more likely to occur. Interestingly, with drug policy in the 1970s, the issue briefly moved to being viewed as a condition, rather than a problem, yet this movement still prompted at least the appearance of legislative change.

Problem Stream Conclusion

Kingdon's (2011) policy windows theory is a useful tool in exploring the question of why the marijuana prohibition problem received legislative and media attention during the late 1970s. The systematic indicators of a continuing increase in marijuana use, especially by the White middle and upper classes, coupled with two influential governmental releases in *The Shafer Commission Report* (1972) and *The White Paper on Drug Abuse* (1975), further called into question the efficacy of Nixon's War on Drugs, especially when applied to a drug as comparatively benign as marijuana. The fact that 10 states decriminalised the drug, and that legislators' and policy entrepreneurs' own offspring started smoking it, helped signal to the government that a hard-line stance on drugs was

politically untenable in the future. As Nixon's drug war ground on, the feedback received from people on the ground dealing with the fallout from these initiatives was less than promising, and as policy makers came to terms with the complexity and seemingly counter-intuitive nature of drug policy, the optimistic goal of a drug-free America was replaced with a more pragmatic view. The huge costs associated with running a drug war also had an impact on its popularity, although all administrations after Carter's were able to overcome this by using the emotional pull of being tough on drug dealers and keeping drugs away from kids, no matter what the cost.

Kingdon (2011) predicts a rise in the problem stream when an issue that was previously framed as a condition is reframed as a problem, but what is interesting in this case is that marijuana use went from being seen as a problem to be eradicated, to a condition to be managed. This move in the opposite direction still pushed the problem upward in the stream. The theory of policy windows does not seem to allow for this anomaly, and further case studies are required to examine if this phenomenon plays out in other issues vying for legislative attention.

The Policy Stream

The idea of dealing with drug abuse through a public health, as opposed to a criminal justice lens, was not new amongst specialists in Carters policy stream, but after Nixon's war on drugs wound up, and President Ford was trying to distance himself from his predecessor Nixon's signature policies, those in the policy stream who advocated an alternative to the drug war found themselves with an opportunity to broadcast their ideas more widely. However, the law enforcement community was more fragmented than usual due to having no central Anslinger-like figure to rally around, as well as the infighting that occurred between Customs and the Drug Enforcement Agency (DEA) as a result of the implementation of *Reorganization Plan No. 2 1973.* At the same time, those advocating more harm reduction approaches and decriminalisation of marijuana were in a period of unparalleled political legitimacy, as the War on Drugs was

seen as a failure, and lobby groups such as the National Organization for the Reform of Marijuana Laws (NORML), led by the talented political entrepreneur Keith Stroup, were taken as serious players.

Political analyst Kingdon (2011) identifies a number of categories in the policy stream, such as technical feasibility, anticipation of future constraints and value acceptability that require those advocating a new policy, such as decriminalisation of marijuana, to be able to give a reasonable idea of what the impact of the new policy will be. With respect to decriminalisation, these categories are typically hard to satisfy as, especially in the 1970s, no one was really sure of what would happen if such liberal drug policies were instituted in a modern nation. Even if one was open to decriminalisation in principle, the logistics of how the process would work, and the legal contradictions inherent in such a move, could still prevent the realisation of liberalised drug laws. However, the Shafer Commission (1972) publication, *Drug Use in America: Problem in Perspective*, and the White Paper, alongside the appointment of the most liberal 'Drug Czar' (Peter Bourne, special assistant to the President for health issues and Director of the Office of Drug Abuse Policy [ODAP], 1976–1979) in American political history, did mean that decriminalisation of marijuana rose to the top of the policy stream as a viable alternative during the Carter Administration (1977–1981).

Policy Communities

Specialists who have a common area of concern form policy communities, which, irrespective of the political or social climate, are constantly working within their sphere of expertise. New and innovative strategies may be conceptualised within these communities for decades before the problem they are dealing with gains recognition over and above other issues in the problem stream. To be sure, these policy communities are affected by changes in political and cultural environments, but "the forces that drive the political stream and the forces that drive the policy stream are quite different: each has life of its own, independent of the other"(Kingdon, 2011, p. 117). Specialists can work within or outside of government, but what defines a specialist group of people as a policy

community is their concern with one particular area of governmental policy (Kingdon, 2011, p. 117).

Drug policy is always caught in a tug-of-war between the two communities of law enforcement on the one hand, and the health community on the other. Within these two communities, there is still a great deal of fragmentation, but it does not seem appropriate to deal with the health–law enforcement divide as a fragmentation as such, because these two policy communities use such widely different tools (treatment versus military intervention, respectively). Consequently, for the purpose of understanding how the policy windows theory applies specifically to drug policy, I will examine the harm reduction community as a separate entity to the criminal justice community. Kingdon (2011) does not allow for this separation in his theory, but for the purposes of the current analysis, this departure from Kingdon's theory appears to be the best approach.

On the far left of the health approach to drug policy, drug use is seen as a net good, with some bad side effects. It is viewed similarly to sports, in that participation is seen to boost overall well-being in the population, and even though there are some unfortunate injuries, drug use is viewed as an overall net positive for society. Drugs boost creativity, bond communities and enhance empathy between humans and between humans and nature. While there are some negatives due to drug abuse, policy makers advocating the health approach believe that overall, the population is better off with free access to mind-altering substances. In stark contrast, some far-right proponents of the health approach hold the view that drugs are all bad, all the time, and that society would be better off with no mind-altering substances at all. However, these more conservative practitioners see the attempt at aiming for a 'drug free' society as naïve and incredibly harmful when such an idea finds its expression in public policy. This part of the policy community subscribes to the idea that drug laws should not do more harm than the drugs themselves. These two disparate approaches come from vastly different starting points, yet allow health approach policy makers to agree on a best course of action.

Those policy makers approaching drug use from a criminal justice perspective have no one in their camp who sees drug use as a positive thing for

society. There are different views held on just how far one should go in pursuing and punishing drug users and sellers, but within the criminal justice community, as opposed to the health approach policy community, the level of fragmentation, and more importantly, the mix of pro- and anti-drug use perspectives, does not exist. All criminal justice policy makers are all anti-drug, and this unity adds coherence to the anti-drug argument.

Fragmentation of Policy Communities

During the mid- to late 1970s, the pro-legalisation movement was led by a more politically savvy entrepreneur than it had ever had before or since, in the name of Keith Stroup, who was the head of NORML during a time when there was very little stigma attached to the organisation(Baum, 1996, p. 94). The National Organization for the Reform of Marijuana Laws had a much greater air of legitimacy during this period, and was taken seriously as an in-touch and informed lobby group(Musto, 2002a, p. 193), even being invited to speak to Congress on proposals to decriminalise marijuana federally.

While NORML and the pro-liberalisation community was at the peak of its power, the community advocating a criminal justice approach was far more fragmented than usual and lacked an Anslinger-like leader to quieten general infighting and to bring about a united front. This infighting manifested itself in an especially intense manner between the newly formed DEA and Customs, with emphasis on the scope and purview of each agency regarding drug interdiction, especially that of gathering and sharing of information pertaining to source countries. "The relationship between DEA and Customs rarely functioned without hitches, but neither did it reach the depths of animosity and dangerous rivalry that existed before 1975"(Musto, 2002a, p. 152). Given that the height of conflict between two key agencies that operated from a criminal justice paradigm coincided with a period of unparalleled legitimacy and unity for legalisation advocacy groups illustrates how fragmentation within a policy community can affect its ability to wield political power.

Incentives and Policy Entrepreneurs

Policy entrepreneurs can be found both within and outside of government, and much like their business counterparts, their defining characteristic "is their willingness to invest their resources — time, energy, reputation, and sometimes money — in the hope of future return"(Kingdon, 2011, p. 122). What constitutes a 'return' varies, depending on the entrepreneur. Some returns are as basic as financial reward, while some entrepreneurs are in the game simply for the thrill of being involved in the political process, while others advocate in order to defend a certain moral position or to defend their bureaucratic turf (Kingdon, 2011, p. 123).

In drug policy circles in the 1970s, a number of entrepreneurs operated both outside and inside of government, but in this section, I will focus on the main player outside of government. Those within government will be discussed in the "Political Streams" section. What is unusual about this period of liberal drug policy is that while those advocating a criminal justice approach to drug use did not have a strong central figure to rally around, or to quell dissent, those advocating a more liberal approach were able to rally around the politically savvy lobby group NORML, led by Keith Stroup. As the 1970 founder of NORML, Stroup showed himself to be an effective political operative, and he managed to bring together people from vastly different ideological perspectives to advocate for decriminalisation of marijuana.

Hugh Hefner's Playboy Foundation was a big part of NORML's financial support, and politically, Hefner brought allies in the form of former deputy administrator of the Bureau of Narcotics and Dangerous Drugs, John Finlator, as well as former Attorney General, Ramsey Clark. Stroup also worked closely with the head of the Drug Abuse Council, Thomas Bryant (Musto, 2002a, p. 193), and for most of Drug Czar Peter Bourne's tenure (1976–1979) as Director of ODAP, Bryant and Stroup agreed on policy and direction. Possibly the greatest coup for Stroup occurred in 1974, when President Nixon's former Drug Czar and the architect of the War on Drugs, Dr. Robert DuPont, was the keynote speaker at NORML's annual conference (Baum, 1996, p. 87).

Not only was Stroup active at the federal level, but he was also involved in changing state laws during the mid-1970s; as he crisscrossed the country urging state legislatures to reform their marijuana laws, he gained influence with local

politicians throughout America (Baum, 1996, p. 80). Since the mid-1970s, NORML has lost its political standing, but at the apex of its power, the organisation gained new heights when representatives testified before Congress about why marijuana laws should be reformed.

During the mid-1970s, there were numerous other pro-legalisation lobby groups, who also helped push the movement along, but the leaders of these organisations did not have Stroup's entrepreneurial ability. The fact that his rise occurred while the prohibitionists were divided and smarting from a failed War on Drugs seems to be a major contributing factor to the opening of the policy window regarding the liberalisation of marijuana laws.

Good Ideas

> The ideas of economists and political philosophers … are more powerful than is commonly understood. Indeed, the world is ruled by little else … I am sure that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas. (Maynard, 1936, p. 383)

Political scientists have a tendency to focus on lobby groups, advocates' ulterior motives, smokescreens and the cloak-and-dagger nature of politics. However, as illustrated by the above quote, in the long run at least, ideas do play a major role. Part of the reason marijuana law reforms hit the agenda is because there really were better, more logical alternatives to the War on Drugs. While merit is not the only factor that can push a particular proposal to the top of the policy stream, all other things being equal, a more effective solution has a greater likelihood of making it to the top of politicians' lists. "Superior argumentation does not always carry the day to be sure. But in our preoccupation with power and influence, political scientists sometimes neglect the importance of content" (Kingdon, 2011, p. 127). Indeed, Carter and Bourne attempted to take the emotion out of drug policy, and this effort allowed more intelligent and nuanced solutions to start to rise to the top of the policy stream, simply because they were good ideas.

Softening Up Processes

Within the policy stream, Kingdon identifies a process of 'softening up', whereby a new idea, which may be the best solution to the problem at hand — if not familiar to the policy community, the legislators or the public — is less likely to be taken seriously. Policy communities are more resistant to softening up approaches (Kingdon, 2011, p. 128), as they tend to be more entrenched in what they see as solutions to problems with which they have intimate knowledge. The public and the legislators, on the other hand, are less specialised, and therefore, tend to have less exposure to the myriad potential solutions to a specific problem. This gives entrepreneurs a greater ability to sway these groups.

> Bureaucrats and analysts constantly issue studies, reports and other papers, some mandated by stature and some done on their own; these can play a part in preparing the policy community for some future direction, even though no immediate result is evident. (Kingdon, 2011, p. 129)

The likes of the white paper, the Marijuana Commission and hearings held before Congress in 1975 and 1977 (Slaughter, 1987, p. 425), as well as those in 1978 (Sharp, 1992, p. 524), had a softening effect on policy communities that were already leaning gradually towards a public health approach to marijuana. Kingdon (2011, p. 130) uses the example of transportation deregulation, which took years of softening up before the first wave of airline deregulation was passed, and this example has far less emotional clout than drug policy. Softening up is a necessary part of the process when pushing for legislative change, and it seems that while there was much greater receptivity to liberal drug policy under Ford and Carter, the evidence of this probably belongs in the category of softening up rather than it being seen as a genuine policy window.

Indeed, these policy initiatives had the opposite effect on communities championing a return to the War on Drugs. Dan Baum (1996) writes extensively on the how the benign language the Carter Administration used to discuss the harm marijuana caused was a factor in mobilising the Parent Movement against

liberal 'pot' laws. The point here is that moves to soften one policy community may be the rally point for an opposing community to mobilise.

Technical Feasibility

Before a policy can, so to speak, 'float to the top' of the policy primeval soup, there has to be a belief that it will work as a solution to the current problem. It is not enough for an idea to seem right, or for it to be the morally correct path. "Many a good idea is sent back to the drawing board, not because it isn't a good idea, but because it isn't 'ready' or 'all worked out'" (Kingdon, 2011, p. 131). Technical feasibility is a particularly hard category to be satisfied in drug policy circles, because the 'soft' data that come from black markets regarding drug use rates, prices and harm of different substances, and almost all forms of hard data, can differ drastically.

No modern nation had experimented with such liberal drug laws when Carter was President in the late 1970s, so there was even more guess work than exists today about what the effects of decriminalising marijuana would be. While there are many problems caused by the prohibition of marijuana, as a policy, it appears coherent. Decriminalising marijuana potentially creates an environment in which the law is essentially unenforced, and this can have a negative impact on the justice system as a whole.

If decriminalisation is seen as sending mixed messages, and out-and-out legalisation brings a whole host of unknown impacts, then the status quo tends to hold. It is essentially a 'better the devil you know' scenario. Questions about how a legalised marijuana market might work, such as how to prevent another 'big tobacco' lobby from taking a heavy political and social toll, arise. Another equally pertinent and difficult question centres around how to ensure that youth drug use rates do not skyrocket. For more mature users, the thorny question of how to deal with a potentially greater number of stoned people in the workforce becomes a health and safety/productivity issue with serious ramifications. All of these conundrums must pass the test of technical feasibility and must be allowed to rise in the policy stream before legalisation can occur. It could well be that prohibition of marijuana is the proverbial 'frying pan', but legalisation or decriminalisation is the 'fire'.

Value Acceptability

Within the community of specialists in the drug use policy field, there tends to be a similar paradigm lens through which the majority view the various problems and solutions that are in their field (Kingdon, 2011, p. 133). A solution that does not line up with the values of a sizeable portion of the policy community will likely not rise in the policy stream, because they are not acceptable according to analysts' personal moral values.

Kingdon (2011, p. 133) discusses other issues that tend to crop up in the value acceptability category, such as the perceived unique political environment in the U.S., which allows politicians to place a far greater emphasis on the ability of free enterprise and the inability of government than do political counterparts in other less intensely capitalistic countries in the developed world. In saying this, the portion of Kingdon's (2011) theory that resonates most with drug policy discussion in this section relates to the fact that policy makers are swayed by emotion. Kingdon (2011) uses the example of the renal dialyses programme, which was originally unfunded under Medicare; it became apparent that only a few well-to-do people had access to this very necessary life-saving treatment. The media began to run stories of so called "death committees" in which physicians would look through files and decide who should and who should not be saved by the new treatment. Of course, the health community routinely makes these kinds of decisions; yet, "such a fundamental, dramatic difference of treatment was more than decision makers values could bare"(Kingdon, 2011, p. 136). The House and Senate quickly passed bills that allowed renal dialysis and kidney transplants to be financed by Medicare, and in a few years, the costs of this amendment had passed the billion-dollar mark. From a utilitarian perspective, the money could have been better spent in other areas to save and prolong more lives, but in a less obvious way. "The moral pressure to avoid letting people die, when a procedure was available to save them, but for its cost, was simply irresistible"(Kingdon, 2011, p. 136).

While it can be easy to slip into the false dichotomy of emotional versus purely rational decision making in academic writing, it does seem that drug policy under the Ford and Carter Administrations was at its most pragmatic. The

year of 1978 is generally perceived by historians as the high water mark for liberal drug policy thinking, both societally and within government (Baum, 1996, p. 97; Musto, 2002, p. xxi), but as the Parent Movement against liberal drug policy started to gain momentum, proponents managed to swing key figures within policy circles, such as Dr. Robert DuPont, to change their tune on liberal drug policies based on the hypothetical prospect of a falling age of addiction. In policy circles, those calling for liberal reforms then found themselves isolated as lone voices calling in the wilderness of anti-drug sentiments, and the Parent Movement gained more momentum. This state of affairs was partly due to the fact that the political landscape was changing rapidly as the Reagan era approached. The emotional imperative of keeping drugs out of the hands of children was a force far greater than the formation of a coherent and fair drug policy, which, overall, worked to minimise the harm that addictive substances have on society.

Anticipation of Future Constraints

Anticipation of future constraints is a hurdle that is very hard to cross when attempting to liberalise drug policy. Policy makers and politicians must deal with a lot of unknowns when looking to espouse options outside of the supply-side prohibitionist paradigm. Certainly, when Carter was in office and even in the present day, there has been no modern nation that has substantially relaxed their drug laws for long enough to be able to answer the question of what would happen to a society if extremely powerful drugs were readily available to the public. "Down the line, decision makers need to be convinced that … there is a reasonable chance that politicians will approve, and that the public in its various facets — both mass and activist — will acquiesce"(Kingdon, 2011, p. 138). It is likely that those in Carter's Administration, such as Robert DuPont and Stuart Eizenstat, who urged more caution in advocating for the decriminalisation of marijuana, may have been looking at possible future constraints imposed by societal values. Indeed, while under the Carter regime, the majority of Americans did approve of decriminalising marijuana.

In the political balancing act that prevails in all nations, policy makers must also take into account the small, but powerful activist sections of the

population, such as the Parent Movement, that may become active in the face of new policy announcements. The anticipation of mass public approval for liberalisation, may have been misread in this instance, as it could very well have been public disillusionment with the government's ability to effectively deal with the problem that set the pre-announcement political scene of acceptance. In sum total, America's long history of drug prohibition meant that it was hard to conceive of a society that allowed easy access to marijuana. Even those in the policy stream, tasked with formulating solutions to problems, take notice of what is occurring politically and are not going to put their efforts into advocating policies that they see as bound to fail. Certainly, under both Ford and Carter, the anticipation of future constraints on a bill to decriminalise marijuana were lower than at any other time since, but the combination of the unknown and unknowable (when dealing with data from black markets), as well as activist segments of the population, meant that federal decriminalisation of marijuana probably did not meet the criteria for gaining wholesale backing from the policy communities involved.

The Emerging Consensus: Bandwagoning and Tipping

Within the policy community, certain ideas will, for a variety of reasons, gain traction and start to build momentum as more policy makers 'jump on the bandwagon'. These ideas tend not to be brand new, but are a recombination of other solutions, with a tweak or two. In his interviews, Kingdon (2011. p. 140) found that those in the policy stream would refer to an "increased feeling" or a "growing realization" and that this sort of rhetoric signalled that some kind of tipping point was being reached in their thinking and in society in general. Unusually, but quite aptly, Kingdon compares this process of growing consensus among policy specialists to that of pending changes in racially mixed neighbourhoods. This tipping point model, based on Thomas Schelling's ideas, revealed that in previously all-White neighbourhoods, one or two non-White minority families would move in, and that this changed the social landscape very little. Thus, the racial mix altered only slowly at first, but once a certain number of minority families settled in the neighbourhood, a tipping point was reached,

and “White flight” took place very rapidly after that point (Kingdon, 2011, p. 140).

Looking at drug policy through a criminal justice lens has been the predominant social and political narrative in modern U.S. political history, yet there have always been voices calling for a more compassionate, or libertarian approach to drug policy. For the most part, they have been ignored, but for a period of time in the wake of a population jaded by Nixon and his War on Drugs, when Ford and Carter presided over a policy stream where these voices started to become predominant. Indeed, academic journals from this time have an air of inevitability to them when discussing the liberalisation of drug laws. The feeling that the War on Drugs had failed, that finally the American legislature had learned that prohibition was not the best path, and that substance use and abuse will always be with us, was becoming the dominant narrative.

The Importance of the Available Alternative

Possibly one of the most powerful barriers to meaningful drug law reform has been the lack of a *viable* alternative. Kingdon (2011, p. 142) distinguishes between those issues that make it to the more broad *governmental* agenda and those that make it to the more specific *decision* agenda. It is rare for a problem to make it to the decision agenda if it does not have a well-reasoned solution attached to it. These issues may be major societal problems, but float in the governmental agenda for decades, in large part because a viable and coherent solution has not been tabled. “It is not enough that there is a problem, even quite a pressing problem. There also is generally a solution ready to go, already softened up, already worked out”(Kingdon, 2011, p. 142). As already discussed in this section, the fact that so little was known about the impact of liberalising drug laws meant that those operating in the political realm in the late 1970s would be taking quite a gamble that their policy people were right.

Policy Stream Conclusion

The issue of drug abuse is dealt with by two distinctly different communities in the U.S., the law enforcement community and the health community. After *Reorganization Plan No. 2* was instituted, the level of infighting within the law

enforcement community was at an all-time high, as Customs and the DEA disagreed on jurisdictional boundaries. This mixed law enforcement community also suffered from not having a strong central figure to rally around and to quell internal dissent, such as the powerfully dominant Anslinger, who had so effectively played this role for decades before the 1970s, when he ran the Federal Bureau of Narcotics (FBN).

The harm reduction community, on the other hand, was enjoying a period of unparalleled political legitimacy, as it was not seen as political suicide to advocate for more lenient drug laws. The extremely effective entrepreneur Keith Stroup was able to foster alliances with other powerful figures such as Hugh Hefner, Dr. Robert DuPont and Peter Bourne. Those working in the policy stream were emboldened to espouse more liberal views on drug policy, as President Carter was advocating for decriminalisation of marijuana. Kingdon (2011) also makes the point that political scientists tend to get preoccupied with the impact that special interest groups and political manoeuvrings can have when it comes to forming policy, and can forget that some legislation is passed because it solves the problem and is legitimately a good idea. It would seem that during the mid- to late 1970s there was less anti-drug vitriol being used to score political points, and that this relaxation allowed for more innovative and rational solutions to the drug problem to be considered.

While there were societal factors pushing the solution of federal decriminalisation of marijuana to the top of the policy stream, there were also a number of unknowns that kept it from gaining enough momentum to find its way into legislation. Much of this inertia came from the fact that very little was known about what the ramifications of substantially liberalising drug laws would be. It is very hard to say with certainty what the implications of a change in drug law will be, in part because of the lack of certainty about how accurate estimations regarding a black market can be.

While Kingdon (2011) stresses the separation of the political and policy streams in his theory, there is still a good deal of overlap, and those in the policy stream who are tasked with searching for solutions are well aware of what is politically and socially acceptable. This issue of value acceptability makes the possibility of wholesale legalisation of drugs unlikely in most societies, but in the

mid-1970s, societal values concerning drugs looked very much like they would accommodate the decriminalisation of marijuana. The problem of drug use had risen to the top of the problem stream, and it seems that decriminalisation of marijuana as part of the solution to that problem had also risen to the top of the policy stream. What is less clear is whether this solution could rise as a viable option in the political stream.

The Political Stream

Within the problem stream, issues that become increasingly pressing will rise to the top of agendas through a number of different mechanisms, and in the policy stream, solutions to these problems are constructed; while thought is given to the political practicality of solutions, there is a greater sense of objectivity to finding the best solution to the problem than in the political stream. The political stream takes into account the realities of opposition parties and the separation of power. At times, it forces advocates of solutions to refrain from pushing for the best solution and to be savvy enough to push for what will be politically palatable.

National Mood

A large part of the political stream comes under the rather amorphous heading of 'national mood'. This concept is often referred to in other ways, such as 'the climate of the country', a 'shift to the left or right' or an 'anti-government feeling' (Kingdon, 2011, p. 147). Kingdon (2011) does not dodge the problems associated with such an ill-defined category, going so far as to question whether such a mood is even a reality. Aside from the methodological issues this could create, he states, "people in and around government believe quite firmly that something like a national mood has important policy consequences" (Kingdon, 2011, p. 149).

National mood is shaped as elected officials get a sense from their constituents as to what issues are important and subsequently communicate these views to bureaucrats, who then spend their time working on the pinpointed issues. The stories the media chooses to run also have an effect (Kingdon, 2011, p. 149). The drop in media coverage of drug issues under the Carter Administration took the emphasis away of drug policy in favour of economic issues and issues of national security. This allowed some breathing space for those who advocated a demand-side strategy to work on a more holistic plan. Policy publications, such as the Shafer Commission's report, *Drug Use in America: Problem in Perspective*, which came out in 1972 under Nixon and received little attention due to it not being anti-drug enough for the then President, were given greater credibility under subsequent Presidents Ford and

Carter, as the War on Drugs was starting to yield evidence of substantial collateral damage. As already mentioned, the white paper and the Shafer Commission both emphasised how benign marijuana was in comparison to other drugs, even alcohol, and this nuance did much to quell prohibitionists' arguments. During the mid-1970s, news stories about drugs and drug-related events and incidents dropped dramatically (Sharp, 1994, p. 15), with media outlets such as the *New York Times* and *Time Magazine* stating that it looked as though it was only a matter of time before the Federal Government caught up and decriminalised marijuana (Baum, 1996, pp. 80, 87). According to Ford and Carter's drug policy expert, David Musto, "among the citizenry, toleration towards the so called recreational use of some drugs was becoming more common and more than a few Americans actively and openly advocated drug use"(Musto, 2002, p. xix).

The fact that a growing number of drug users were of a White middle-class background, were college students or were returning Vietnam veterans, meant that the method of tying an ethnic minority to a substance, such as the identification of opium use with the Chinese minority at the turn of the Century, or the link politicians made between marijuana use and a surplus Mexican labour market in the 1930s, was therefore less of an option. The mainstream middle class's best and brightest were smoking pot at hitherto unprecedented levels, and a war-weary nation found it easier to let the tide turn in favour of practicality rather than to wage a war on the ones who had been half a world away waging a war on American's behalf. The national mood shifted to the left, as evidenced by media accounts of the time, partly through the lack of any hardline anti-drug national address given by Ford or Carter, who, rather than vehemently condemning marijuana use in their presidential debates, allowed their speeches to "[take] the form of a competition between the candidates as to who would be more understanding of his children's experimentation with marijuana" (Musto, 2002, p. xix).

National mood had shifted for the first time since Anslinger took the helm, and American society in general was leaning towards being more accommodating of drug use; the politicians were starting to be affected by what they sensed as a change. Kingdon (2011) does not allow for this socially driven

political motivation in his conception of national mood, but it seems clear that historical feelings towards an issue would play a part in the construction of national mood, which is likely affected by the legacy of prohibitionist ideology. While a majority of Americans supported decriminalisation, an equal majority still believed the use of the drugs to be physically harmful (Sharp, 1994, p. 41). Thus, the period of receptivity to liberal drug policy, which occurred between 1972 and 1978, was, in historical context, a minor blip in national mood from the prevailing consensus that was put into place by Anslinger in the 1930s. Rather than being seen as a shift towards more wholehearted, widespread acceptance of drug use, this period in the 1970s could be seen as a time when the American people were less optimistic. Still smarting from the Vietnam War, Watergate and the continuing Iranians hostage fiascos, a sense of resignation had set in. Indeed, President Reagan pinpointed this mood when he took office and famously boasted of taking down the surrender flag and running up the battle flag against drugs once more.

Organised Political Forces

Kingdon (2011) discusses how policy entrepreneurs and policy communities interact with government in his analysis of organised political forces. In his policy stream discussion, centred around policy communities, Kingdon (2011) looks for reasons why the liberalisation side gained more traction in the 1970s, while the prohibitionist side was more fragmented. It is evident from his discussion that the perceived strength or weakness of a lobby group can have a significant effect on the political stream, as politicians weigh up what level of support or opposition there is for any and all political moves they may make, and then act accordingly (Kingdon, 2011). Quantifying the balance of political support has similar methodological issues associated with quantifying national mood, but Kingdon (2011, p. 151) insists that the key factor is that those in government "can be quite specific about who is on which side and which side has greater strength, however they define that strength".

Those wishing to continue the Nixon-style drug war were dealt a big blow when Ford took over and actively distanced himself from initiatives that were closely linked to Nixon himself (Musto, 2002b, p. 140), but the marijuana

prohibitionist model was not brought into question within government until the election of Carter, when those on the pro-decriminalisation side of the argument found sympathetic ears under the new administration. Drug experts who espoused more liberal approaches felt freer to express their own opinions after Nixon departed (Musto, 1999b, p. 258).

While the pro-decriminalisation organised political forces such as NORML had a listening ear during the Carter Administration, they did not foresee the tide shifting and the Parent Movement become a part of what was a conservative shift across the country. "Just as the formation of NORML had reflected a mood for a more open drug policy, now the birth of PRIDE (Parents' Resource Institute for Drug Education) indicated the presence of a constituency that wanted harsher drug laws" (Levinson, 2002, p. 25). An interesting example of the power that organised political forces can apply is that of Dr. Robert L. DuPont, Director of the National Institute on Drug Abuse (NIDA), who became an advocate of marijuana decriminalisation during the mid-1970s until the Parent Movement gained momentum, when he went back to advocating prohibition. When questioned on why he changed his stance, he said that "it was parent power that changed my mind on marijuana" (Musto, 2002b, p. 233). As already discussed in the "Policy Streams" section, the battle between Customs and the DEA on the supply side, coupled with the unprecedented strength of societal demand and legalisation side, meant that politicians believed advocating for decriminalisation to be a "politically safe position" (Goldstein, 1977, p. 14).

Turnover of Key Personnel

In the political stream, turnover of key personnel has an impact on what issues will gain the limelight. "Either incumbents in positions of authority change their priorities and push new agenda items; or the personnel in those positions changes, bringing new priorities onto the agenda by virtue of the turnover"(Kingdon, 2011, p. 153). During the mid-1970s, the entire Federal Drug Program followed the *Reorganization Plan No. 2* of 1973, as it was deemed there was "no overall direction below the level of the Attorney General"(*Reorganization Plan No. 2*, 1973). During this time of reorganisation, Dr. Robert DuPont was head of both NIDA and the Special Action Office for Drug

Abuse Prevention (SAODAP), and the fact that he had changed his stance on marijuana to the point of supporting decriminalisation, made liberal marijuana policies more politically acceptable during this time. While DuPont was certainly a key figure during this brief liberal window, the move away from Nixon's War on Drugs by Ford, and the subsequent change of administrations when Carter was elected, had greater impact. In the drug policy and political theatre, the most influential change in personnel is most likely to be the appointment of Peter Bourne as Drug Czar, or more formally, the Director of the National Drug Control Policy. Ford, Carter and Bourne's profound effects on the American political stream are discussed in the following subsections.

President Ford

Apart from it being politically expedient for Ford to distance himself from initiatives that were particularly Nixonian after the ex-President's embarrassing impeachment, Ford's approach to drug politics was quite different. He termed his approach to government as the "new realism" and shied away from such ambitious sentiments as ending all drug use in America (Musto, 2002a, p. xix). His approach was in line with the national mood of the time, which had very little positive expectation for government intervention.

Ford did not go to the extent of Carter in advocating for the decriminalisation of marijuana, however, but even the step back that he took from Nixon's policies in fighting the drug war had negative political consequences in the lead-up to his run against his Presidential challenger, Carter. Ford's statements on the limited effectiveness the Federal Government could have on the narcotics problem did not help his cause in Congress, and when he did not seek appropriations for the funding of the new Office of Drug Abuse Policy (ODAP), accusations that he was soft on drugs became a political liability. This prompted his statement to supply countries as well as to domestic politicians assuring them of his "full commitment to curbing the illicit traffic in drugs" including his "pledge to the American people [of] an all-out federal effort to combat the drug menace"(Musto, 2002a, p. 175). While Ford did not go as far as Carter in terms of advocating a more liberal drug policy, his more pragmatic and realistic approach to drug policy did allow for those on the harm reduction

and demand side of the drug issue to gain more power in policy and political circles. Ford was an important step along the road to the even more pragmatic Carter. The chasm created by the American journey from Nixon's drug war to Carter's call for decriminalisation of marijuana was substantially narrowed by Ford's short stint of "new realism".

President Carter

In a similar vein to Ford, Carter believed the Federal Government could be of limited effectiveness in an all-out war on drugs. His midterm strategy was based on the belief that "we cannot talk in absolutes — that drug abuse will cease, that no more illegal drugs will cross our borders — because if we are honest with ourselves we know that is beyond our power"(Baum, 1996, p. 96). Carter agreed with the basic tenets of the white paper, which was released under the Ford Administration (Musto, 2002a, p. 208), and therefore, Carter took the unprecedented step of supporting the federal decriminalisation of marijuana (Sharp, 1992, p. 542). Carter differed greatly from Nixon and Reagan in that rather than making drug policy an issue of high public interest and a very visible part of his platform, the Carter approach was to "[emphasize] control of the issue by interests and experts within government, with less publicly visible attention given to the problem" (Sharp, 1994, p. 36). Aside from keeping the issue out of the public eye, Carter's drug policy was based on three important themes: 1) a requirement "for a more comprehensive and balanced approach to the drug issue"; 2) a requirement "for rational discourse and research to overcome undue hysteria and false premises about the drug problem", and 3) a requirement "to rationalize federal drug policy making through re-organization"(Sharp, 1994, p. 37). This cool and rational approach, while quite logical from a policy perspective, did not take into account the large amount of emotion connected with drug policy issues. This oversight would, in the words of one commentator, "number among the nails in Carter's political coffin" (Baum, 1996, p. 98).

Kingdon (2011, p. 154) found in his interviews that upwards of 80% of his interview respondents saw a change in presidential administration as a time of flux, when issues were more likely to either rise or fall in the political stream, which occurred twice in short succession — with the rapid rises and equally

rapid falls of both the Ford and Carter Administrations — after Nixon's impeachment. All of these changes in administration had the effect of turning over key personnel before they had a chance to become entrenched, which laid the way for a more demand-side approach to drug policy.

Peter Bourne

Peter Bourne is arguably the single most prominent figure in both policy and political streams during the liberal drug period of the 1970s. When still Governor of Georgia, Carter had appointed Bourne as head of the State's drug program, and from there, Bourne took a senior position in SAODAP, but he left the job after two years in order to work on the Carter election campaign (Musto, 1999a, p. 260). This familiarity with the President, coupled with the fact that he was the first and only Drug Czar who was technically trained in the areas of mental health and substance abuse (Sharp, 1994, p. 37), has prompted some commentators to suggest that Peter Bourne was "the government's highest ranking and most influential drug authority in the nation's history" (Musto, 1999a, p. 260). Bourne was also quite outspoken in his opinion that the War on Drugs mentality needed to be revised. Bourne stated, "We have seen the past where criminal penalties have resulted in otherwise law-abiding young people spending time in prison and incurring permanent damage to their careers and their ability to enter professions. This causes far greater harm to their lives than any effect the drug would have had and the penalties are counter-productive" (Sharp, 1994, p. 43).

In comparison to Carter's other policy advisors, Bourne was particularly optimistic about how receptive the American public would be to re-thinking the prohibitionist model. In preparation for Carter's midterm strategy, Chief Domestic Policy Adviser Stuart Eizenstat was concerned about the tenor of the President's message about marijuana, which he felt was "written in an almost laudatory tone", and Eizenstat also felt that some sections "almost seem[ed] to be a positive recommendation of the drug"(Musto, 2002a, p. 195). There were even rumours that Bourne had written the parts of the midterm strategy that related to marijuana in conjunction with NORML (Musto, 2002a, p. 195). Carter did end up toning down some of what Bourne had prepared, on advice from the likes of Eizenstat and DuPont; indeed, the obvious fact that Bourne held a more

liberal view at the helm of drug policy certainly helped decriminalisation rise higher in both policy and political streams.

It would be unfair to characterise Peter Bourne as an academic with no head for politics, as he was an integral part of Carter's successful campaign for Presidency, yet two incidents in particular prompted one commentator to suggest he had a "lack of appreciation for the sensitivity of his position"(Musto, 2002a, p. 215). Firstly, as a medical doctor, Bourne was legally allowed to prescribe medications, but when he prescribed Quaalude to a young female White House staff member, Ellen Mesky, in order to help her sleep, he gave her a false name in order to protect her job (Musto, 2002a, p. 215). In a very unusual turn of affairs, the pharmacist filling the prescription figured out that the prescription was under a bogus name, and this information made it into the media. What was particularly damaging was that this particular drug was also used heavily in the party disco scene and to enhance sexual experiences. This event certainly had a negative impact on Bourne's credentials, but when he was accused by columnist Jack Anderson of taking cocaine at a NORML party on morning television, his credibility sank too low and his subsequent resignation became inevitable, because any drug policy initiatives would have been tarnished by his alleged involvement in the drug scene (Sharp, 1994, p. 44).

Indeed, while the tide was turning to a more conservative approach to drug policy, it has been suggested that Bourne was partly responsible for the shift in attitude: "the drug law reform movement vanished up Peter Bourne's nose"(Sharp, 1994, p. 44). Peter Bourne's career in governmental drug policy traces a very similar trajectory to the rise of liberal drug policies in the 1970s. As he was making his way up in SOADAP, the War on Drugs was losing popularity. When he eventually peaked as Drug Czar in the Carter White House, his greatest influence coincided with the greatest social and political acceptance of the harm reduction approach. As Bourne subsequently and quickly became a political outcast due to his indiscretions, the Parent Movement was gaining steam and the War on Drugs was about to be ramped up once again.

Questions of Jurisdiction and Consensus Building

"Certainly we expect bureaucrats to defend their turf. When they do not, the event is certainly noticed, and can become very significant" (Kingdon, 2011, p. 156). Bureaucrats did defend their turf during this time, and the squabbles between Customs and the DEA during the 1970s centred around jurisdiction, as the massive increase in federal drug spending was being doled out. This infighting had the effect of weakening the supply-side community and of opening up new political channels so that voices from the demand side were more clearly heard.

Kingdon (2011) notes that when legislative action looks more likely, there can be an element of competition as to who can put their name to a popular bill. This scenario has a similar dynamic to bandwagoning, but occurs when politicians or organisations compete to claim themselves as the origin of the movement for change. When this political environment occurs, it can greatly speed up the legislative process. This does not seem to have been a factor with regard to liberalising marijuana laws, and the absence of this factor could even be pointed to as evidence that the U.S. was still very far off federal decriminalisation. It seems that there was no great rush to put one's organisation or political career on the line for this cause. A few individuals did, such as Senators Jacob, Cranston and Koch, but more than likely, this was a test of the political environment rather than a move they thought would actually result in meaningful change. When consensus building reaches a tipping point, "joining the coalition occurs not because one simply has been persuaded of the virtue of that course of action, but because one fears that failure to join would result in exclusion from the benefits of participation"(Kingdon, 2011, p. 159).

Political Streams Conclusion

In the 1970s, in both the policy and problem streams, the potential for federal marijuana decriminalisation became a prominent possible solution. It would seem, however, that in the world of politics, this option was still far from being seriously considered. Even with the positive media coverage of the proposed, more liberal drug laws, and the publication of the white paper, which suggested that the nation should not even aim for a drug-free society, the political reality

for American society was one of inertia. The inertia held even in the face of the American Bar Association and the National Council of Churches advocating decriminalisation of marijuana, and it was clear that a move at the federal level was not likely. The long history of prohibition and the amount of emotional force needed to swing national mood on the drug issue has always kept savvy politicians from putting their names behind such a volatile issue, and even the liberal policy window opened under Ford and Carter was, for the most part, no exception.

Future Direction of Drug Policy

The majority of Obama's term has been during a period of relative sympathy to liberal drug policies as the effects of a four-decade long war on drugs is becoming less popular. With regard to marijuana policy, this section briefly compares and contrasts the political and policy issues faced during Carter's term, with those of the current day.

Problem Stream

During the Obama Administration it would seem that the problem of marijuana use has become less prominent and has been replaced in the problem stream, to a large degree, by the problem of marijuana prohibition. This shift in attitude is reminiscent of what occurred during the 1970s when Jimmy Carters Drug Czar, Peter Bourne, was quite vocal about this issue, believing that the laws surrounding marijuana were doing more harm than the drug itself. In 2010 three-quarters of Americans believed the war on drugs to be a failed policy(Kreit, 2010, p. 559) having seen four decades of its increasing financial and social costs.

The US has by far the largest prison population in the world, with a substantial number of these being for non-violent drug offenses and an estimated 40,000 relating to marijuana convictions(Caulkins et al., 2012, p. 50). A privatized prison system has given economic incentive for a strong lobbying force in Washington to fight to maintain long mandatory minimum sentences for

drug offences(Eugene Jarecki, 2012) and this has disproportionately affected minorities with some states having incarceration rates 8 times higher for blacks than whites when it comes to Marijuana convictions.(Wegman, 2014) The judicial and policing system are straining under the large amount of marijuana related arrests, with FBI figures in 2012 showing that over twice as many arrests were made for Marijuana than for cocaine, heroin, and their derivatives combined.(The Editorial Board, 2014)

The price of this increase in policing and incarceration was another factor that has changed the perception from there being a problem with marijuana consumption, to being a problem with marijuana prohibition. President Regan with the just say no campaign essentially said that Nixon was on the right track with the drug war, but that it had not been fought with enough vigor, hence the huge increase in spending in this area during the 1980s. By the time Obama was in office however, the drug war had been well funded and supported by all administrations after Carter, so the argument that, if pursued with full vigor, the drug war would succeed was becoming less believable. Harvard economist Jeffery A. Miron estimates the amount spent on marijuana prohibition at $7.7 billion annually(Christianson, 2010, p. 237). He also estimates that if marijuana was legalized that would provide an extra $6.2 billion in tax revenue to help deal with societal issues created by any extra marijuana users.

The prohibition of alcohol is often credited with the increase in organized crime in America, especially giving the Mafia a level of power and influence it may never have gained without it. As the drug cartels continue to gain power in Mexico, and as their influence increases across the border, parallels can be drawn between the prohibition of alcohol and the prohibition of marijuana as it is estimated by the White House Office of National Drug Control Policy that 60% of Mexican drug cartel revenue is generated by the selling of black-market marijuana in the US.(Christianson, 2010, p. 237) Others argue that the majority of cartel funding and violence emanates from illegal markets for stimulants(Caulkins et al., 2012, p. 130) but even the more conservative authors of Marijuana Legalization: what everyone needs to know, concede that “in the

long run, marijuana legalization would make a meaningful, but not decisive contribution to reduce the flow of funds to violent Mexican Drug Trafficking Organizations."(Caulkins et al., 2012, p. 177) The increase in power of the drug cartels and their destabilizing influence factor in the change in attitude that sees prohibition rather than use of marijuana as the problem.

While the locking up of tens of thousands of non-violent offenders, the massive financial burden of the drug war, and the fact that organized crime syndicates do very well from the prohibition of marijuana, prominent drug policy scholars Bonnie and Whitebread contend that "the most compelling reason for modification or elimination of marijuana prohibition lies in its disastrous impact on the law as an institution."(Christianson, 2010, p. 236) As up to 100 million Americans have smoked Marijuana and a majority no longer support it being made illegal, there is an argument that not only the laws governing Marijuana, but all law, loses its potency due to this widespread law-breaking(Christianson, 2010, p. 210).

Certainly similar arguments were made during the Carter administration as to why marijuana prohibition was causing more problems than the use of cannabis, however, it would seem harder for a politician to say, as Reagan essentially did, that the fundamentals of the drug war are sound, but we just haven't put enough resource and vigor into it. This argument had greater legitimacy at the beginning of the drug war, but one would be hard pressed to say that through the 80s and 90s there was a lack of commitment to prohibitionist drug policy. Those advocating decriminalization are less vulnerable now to a political movement that calls for a revitalized drug war than were those during the Carter Administration. The longer the racial inequalities of the drug war continue, and as the financial cost of these policies continues to climb with no real proof as to efficacy of these laws, the problem of marijuana use will be replaced at the top of the problem stream by marijuana prohibition.

Policy Stream under Obama

When Jimmy Carter and Peter Bourne were advocating decriminalization of marijuana there were few other nations that had experimented with a liberalizing of their drug laws, thanks to the international influence of Anslinger and his strong prohibitionist policies. This meant that policy advisors during this era were unable to point to industrialized nations where liberal drug policies had been effective. This is not a problem that policy advisors have today however, as they can draw on data from a number of states that decriminalized marijuana, as well as the Netherlands, who went even further, but did not go all the way to fully legalizing the drug. While commentators disagree on the impact of these more liberal policies, predictions of a massive increase in drug use and crime has not accompanied them. A study by the World Health Organization concluded that while the US has the most punitive policies of 17 countries studied, it still had the highest rates of illegal drug use.(Kreit, 2010, p. 559)

Portugal decriminalized all drugs in 2001 and while some studies show a slight increase in drug use overall, the number of problematic drug users has been cut in half according to the Portuguese Ministry of Health(Hari, 2015, p. 249). HIV transmission related to drug use has fallen by 32% and both the British Journal of Criminology and the European Monitoring Centre for Drugs and Drug Addiction, who conducted extensive studies on the impact on decriminalization in Portugal, found that addiction, teenage drug use, and deaths due to drug use all fell after decriminalization.(Hari, 2015, p. 249) When Colorado legalized sale and consumption of marijuana for recreational purposes crime rates fell in Denver from the previous year and $23.6 million was taken in taken in tax revenue(Downes, 2014). Seeing decriminalization policies working abroad and within the US adds credibility to those in the policy stream who advocate federal decriminalization of marijuana.

The decriminalization of marijuana in some states in the 1970s created a contradiction between state and federal law, but not to the degree that it was deemed necessary to reconcile this contradiction. When Colorado fully legalized their marijuana market this increased the gap between state and federal law, and while the Obama Administration and the DOJ has been hastily writing memos

admonishing Federal Authorities not to intervene if there is no violation of state law, marijuana business still operate in an environment that is "quasi-pseudo-hemi-demi legal."("How Not to Make a Hash Out of Cannabis Legalization," 2014) "Banks and financial institutions, in particular, face tremendous legal uncertainty about the extent to which they may provide services to marijuana related business."(Adler, 2014, p. 506) As marijuana related business grow and become major economic players in states where they are legal it is unlikely that the difference in state and federal law will be able to stand for decades as it did with decriminalization.

While the legalization of marijuana in the states will push the federal government to clarify its position in the near future, those in the policy stream that advocate legalization will be hard pressed to address the issue of how to avoid a big marijuana lobby that wields political power in a similar manner to big tobacco. As agricultural procedures improve it is estimated that a pound of high potency marijuana could go for as little as $20 whereas it currently sells for about $2,000 in California.(Kilmer, 2014, p. 259) Even with heavy taxation, the potential for a black market if taxation alone were to keep prices at levels to what they are currently is a particularly tough issue for analysts to deal with. As is similar with alcohol and tobacco users it is estimated that 80% of consumption of marijuana is by 20% of the using population which means that "profit maximizing companies will have strong incentives to create and retain heavy users."(Kilmer, 2014, p. 260).

Those in the policy stream who advocate reform of the federal marijuana laws have an advantage over their counterparts in the 1970s in that they are able to point to jurisdictions where this has been adopted to positive effect decades ago. Now that some states have fully legalized, the pressure to maintain a stable economic environment that allows investors some kind of certainty that the business they invest in today will not be shut down by law enforcement tomorrow means that it is likely the next president will be pushed to at least decriminalize Marijuana, or leave it entirely up to the states to enforce.

Politics stream under Obama

The Carter Administration's drug policy program was derailed by a drug Czar and President who underestimated the powerful anti-drug feeling that Reagan was able to tap into. Advocates of legalization in contemporary times seemed to have learned from the era of the 1970s as they look to move away from stoner stereotypes. "the replacement of industry icon Tommy Chong(of Cheech and Chong fame) by the NCIA(National Cannabis Industry Association) seems to be an attempt to strengthen legitimacy via 'dehippification'(authors term)."(Subritzky et al., 2016, p. 4) This move to seem more mainstream is wise, as the more the industry can blend in, the less prohibitionist groups will be able to rally their base. "Support for marijuana legalization is much less driven by moral conviction and much more by the belief that it is not a moral issue at all."(Galston and Dionne Jr, 2013, p. 4) A series of New York Times articles that argued forcefully for the legalization of marijuana echoed a similar sentiment in saying that "Consuming Marijuana is not a fundamental right that should be imposed on the states by the federal government, in the manner of abortion rights, health insurance, or the freedom to marry a partner of either sex."(Firestone, 2014) Because of the lack of moral force that can be put behind liberal drug laws it seems that the Obama administration has been prudent in simultaneously stating that while legalization is not in the Presidents vocabulary(Kreit, 2010, p. 561), he supports the legalization in Colorado and Washington.(Firestone, 2014) In reality, a change in the Federal law regarding Marijuana would not, in and of itself, make a big difference, as the vast majority of arrests for marijuana possession are executed at the state level. In 2008 state law enforcement arrested 754,223, while Federally there were 626. Politically however, drug policy is still a hot issue, especially as the opioid epidemic becomes more widespread and covered in the media. Historically drug policy has been dealt with as a monolithic issue, and as the increase in heroin and prescription opioid deaths continues, this could make those pushing for marijuana law reform vulnerable to arguments about the gate-way drug theory. If the President came out in favor of Federally decriminalizing or legalizing it would certainly strengthen the cause of those on the liberal side of drug policy, however it could also add momentum to those wishing to continue with

prohibition. This occurred during the Carter Administration as the Parents Movement formed in part, because they felt the government was sending the wrong message to teens in advocating for decriminalization.

Conclusion

During the Obama administration cultural and political problems regarding marijuana have started to focus on the issues that are created by its prohibition, rather than its use. While this shift in thinking occurred during the Carter administration, it seems there are greater forces pushing for the repeal of prohibition in the current climate than there was under Carter. The increase in the prison population, and the disproportionate amount of minorities incarcerated for drug crimes since the 1970s has grown dramatically. This has started to sway public opinion as many activists push for prison reform and link this to unfair drug policies. The financial costs of the war on drugs, coupled with the lack of tax take from a legalized market help create a climate in which marijuana policy is re-evaluated, especially after the financial shocks of 2008. As Mexico is increasingly destabilized by drug cartels who gain the majority of their funding from illicit drug markets in the US, and as the majority of the population see the war on drugs as a failure, the pressure to change drug law continues to mount.

During Carters Presidency, there were few other industrialized nations that had experimented with liberal drug policies, but in the present day politicians can look at the impact of a number of states that decriminalized in the 1970s as well as the close to legal market in the Netherlands, and Portugal's decriminalization of all drugs. For the most part, these liberal policies have been successful. Possibly the most potent factor that will push for the decriminalization of marijuana, if not its legalization, at the federal level is the tension that exists between state and federal law as states continue to fully legalize. As investment in this growth industry continues, there will be pressure for the federal government to remove uncertainty from the market.

Final Conclusion

The theory of policy windows is a useful framework to apply in order to understand what forces were at play that pushed the federal decriminalization of marijuana to the governmental agenda during the Carter Administration. The strength of the theory lies in its ability to map the political and social landscape in order to see where an issue is likely to falter on its journey to being dealt with in the legislature. The breadth of the theory is also its weakness, as critics assert that it is so unspecific as to not allow for the comparison between different areas of policy, or even between different points in history. The tension between applying a theory that is so specific it does not take into account the vast range of factors that affect the legislative process, and choosing a theory that is so broad that one cannot draw comparison to other areas of policy is not an easy methodological issue to solve. In this case however, it would seem that Kingdon's theory falls somewhere between being too overly specific and being too vague.

Under the Carter Administration politicians, and the public in general, started to question whether the laws governing marijuana were doing more harm than the drug itself. This meant that the problem of marijuana use was increasingly being seen as the problem of marijuana prohibition. This allowed those in the policy stream who had been advocating harm reduction approaches to have their voice heard in the political stream. While the problem of prohibition had risen in the problem stream, and the solution of federal decriminalization had risen in the policy stream, there were factors in the politics stream that did not allow for legislative action to take place. The discussion of federal decriminalization stayed relatively quiet for 3 decades after Carter, but under the Obama administration the discussion has resurfaced. Many of the factors that pushed this issue in the 1970s are present today, but the continued failure of the war on drugs along with the rising costs of incarceration and the economic incentive to legalize marijuana mean that federal law reform is more likely now than it was under Carter.

BIBLIOGRAPHY

Adler, J.H., 2014. Marijuana, Federal Power and the States. Case W Res Rev 65, 505.

Almond, G.A., Genco, S.J., 1977. Clouds, clocks, and the study of politics. World Polit. 29, 489–522.

Anslinger, H.J., Oursler, W., 1961. The murderers: the story of the narcotic gangs. Farrar, Straus and Cudahy.

Baum, D., 1996. Smoke and mirrors: The war on drugs and the politics of failure. Little, Brown New York.

Blackman, S.J., 2004. Chilling out: the cultural politics of substance consumption, youth and drug policy. Open University Press, Maidenhead.

Bonnie, R.J., Whitebread, C.H., 1974a. The marihuana conviction: A history of marihuana prohibition in the United States. University Press of Virginia Charlottesville, VA.

Bonnie, R.J., Whitebread, C.H., 1974b. The marihuana conviction: A history of marihuana prohibition in the United States. University Press of Virginia Charlottesville, VA.

Buxton, J., 2006. The political economy of narcotics: production, consumption and global markets. Zed Books.

byJOHN MAYNARD, K., 1936. The General Theory of Employment, Interest, and Money.

Caulkins, J.P., Hawken, A., Kilmer, B., Kleiman, M.A.R., 2012. Marijuana Legalization:What Everyone Needs to Know. Oxford University Press.

Chomsky, N., 2010. Hopes and prospects. Haymarket Books.

Christianson, M.A., 2010. Great Schism: Social Norms and Marijuana Prohibition, A. Harv Pol Rev 4, 229.

Commission, S., others, 1972. Marijuana: Signal of Misunderstanding. First Rep. Natl. Comm. Marijuana Drug Abuse US Gov. Print. Off. Wash. DC.

Downes, L., 2014. The Great Colorado Weed Experiment. N. Y. Times.

Drugs and politics, 1977. . Transaction Books, New Brunswick, N.J.

Earleywine, M., 2002. Understanding marijuana: a new look at the scientific evidence. Oxford University Press, Oxford ; New York ; Auckland [N.Z.].

Eldridge, W.B., 1962. Narcotics and the law: A critique of the American experiment in narcotic drug control. American Bar Foundation New York.

Erlen, J., Spillane, J.F., 2004. Federal drug control: the evolution of policy and practice. Routledge.

Eugene Jarecki, 2012. The House I live in.

Falco, M., 1996. U. S. Drug Policy: Addicted to Failure. Foreign Policy 120–133.

Firestone, D., 2014. Let States Decide on Marijuana. N. Y. Times.

Force, D.C. (U S.) D.A.T., 1975. White Paper on Drug Abuse, September 1975: A Report to the President from the Domestic Council Drug Abuse Task Force. Task Force.

Galston, W.A., Dionne Jr, E.J., 2013. The new politics of marijuana legalization: Why opinion is changing. Gov. Stud. Brook. BrookingsWOLA 1.

Goldstein, T., 1977. Backing Grows for Easing Marijuuana Laws. N. Y. Times.

Goode, E., 1970. The marijuana smokers. Basic Books (AZ).

Hall, W., 2004. Cannabis use and dependence: public health and public policy. Cambridge University Press, New York.

Hari, J., 2015. Chasing the scream: The first and last days of the war on drugs. Bloomsbury Publishing USA.
Harrison, L.D., Backenheimer, M., Inciardi, J.A., 1995. Cannabis use in the United States: Implications for policy. Cent. Drug Alcohol Stud. Univ. Del.
Hirschman, A.O., others, 1971. A bias for hope. Yale university press New Haven.
How Not to Make a Hash Out of Cannabis Legalization [WWW Document], 2014. . Wash. Mon. URL http://washingtonmonthly.com/magazine/marchaprilmay-2014/how-not-to-make-a-hash-out-of-cannabis-legalization/ (accessed 7.17.16).
Jaiani, V., Whitford, A.B., 2011. Policy windows, public opinion, and policy ideas: the evolution of No Child Left Behind. Qual. Assur. Educ. 19, 8–27.
Jonnes, J., 1996. Hep-cats, narcs, and pipe dreams: a history of America's romance with illegal drugs. Scribner, New York, NY.
Kaplan, J., 1970. Marijuana–the new prohibition. World Publishing Company New York.
Kilmer, B., 2014. Policy designs for cannabis legalization: starting with the eight Ps. Am. J. Drug Alcohol Abuse 40, 259–261. doi:10.3109/00952990.2014.894047
Kingdon, J.W., 2011. Agendas, Alternatives, and Public Policies. Longman Publishing Group.
Kingdon, J.W., 1984. Agendas, alternatives, and public policies. Little, Brown, Boston.
King, R., 1972. The drug hang-up: America's fifty-year folly. Norton New York.
Kreit, A., 2010. Beyond the Prohibition Debate: Thoughts on Federal Drug Laws in an Age of State Reforms. Chapman Law Rev. 13, 555.
Levinson, M.H., 2002. The drug problem: a new view using the general semantics approach. Praeger, Westport, Conn.
Mucciaroni, G., 1992. The Garbage Can Model & the Study of Policy Making: A Critique. Polity 24, 459–482. doi:10.2307/3235165
Musto, D.F., 2002a. The quest for drug control: politics and federal policy in a period of increasing substance abuse, 1963-1981. Yale University Press, New Haven.
Musto, D.F., 2002b. Drugs in America: A documentary history. NYU Press.
Musto, D.F., 1999a. The American disease: Origins of narcotic control. Oxford University Press (New York).
Musto, D.F., 1999b. The American Disease: Origins of Narcotic Control. Oxford University Press.
Musto, D.F., 1973. The American disease: origins of narcotic control. Yale University Press, New Haven.
Nelson, H., 2007. Does a crisis matter? Forest policy responses to the mountain pine beetle epidemic in British Columbia. Can. J. Agric. Econ. Can. Agroeconomie 55, 459–470.
Office of Nat'l Drug Control Policy, Executive Office of the President, 1989. National Drug Control Strategy.
Reiman, A., n.d. The Fallacy of a One Size Fits All Cannabis Policy.
REORGANIZATION PLAN NO. 2 OF 1973 [WWW Document], n.d. URL http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5a-node83-leaf181&num=0&edition=prelim (accessed 6.23.16).

Rex, J., Jackson, D.J., 2009. Window of Opportunity? Internet Gambling in Canada. Can. Public Policy 35, 121–137.
Robinson, M.B., Scherlen, M.B.R.R.G., 2007. Lies, Damned Lies, and Drug War Statistics: A Critical Analysis of Claims Made by the Office of National Drug Control Policy. SUNY Press.
Rosenberger, L., 1996. America's drug war debacle. Avebury, Aldershot, Hants, England ; Brookfield, Vt.
Saint-Germain, M.A., Calamia, R.A., 1996. Three strikes and you're in: A streams and windows model of incremental policy change. J. Crim. Justice 24, 57–70.
Sharp, E.B., 1994. The dilemma of drug policy in the United States. HarperCollins College Publishers.
Sharp, E.B., 1992. Agenda-Setting and Policy Results. Policy Stud. J. 20, 538–551.
Simon, M.V., Aim, L.R., 1995. Policy windows and two-level games: explaining the passage of acid-rain legislation in the Clean Air Act of 1990. Environ. Plan. C 13, 459–478.
Slaughter, J.B., 1987. Marijuana Prohibition in the United States: History and analysis of a failed policy. Colum JL Soc Probs 21, 417.
Solecki, W.D., Shelley, F.M., 1996. Pollution, political agendas, and policy windows: environmental policy on the eve of Silent Spring. Environ. Plan. C 14, 451–468.
Subritzky, T., Pettigrew, S., Lenton, S., 2016. Issues in the implementation and evolution of the commercial recreational cannabis market in Colorado. Int. J. Drug Policy 27, 1–12. doi:10.1016/j.drugpo.2015.12.001
The Editorial Board, 2014. The New York Times Calls for Marijuana Legalization. N. Y. Times.
The new war on drugs: symbolic politics and criminal justice policy, 1998. , ACJS/Anderson monograph series. Academy of Criminal Justice Sciences ; Anderson Publishing Co, Highland Heights, KY : Cincinnati, OH.
Trujillo, C.W., 2011. Marijuana, Mexico and the media. Humboldt State University.
Tyrrell, I., 1997. The US prohibition experiment: myths, history and implications. Addiction 92, 1405–1409.
Wegman, J., 2014. The Injustice of Marijuana Arrests. N. Y. Times.
Winterbourne, M., n.d. United States drug policy: The scientific, economic, and social issues surrounding marijuana.
Zimring, F.E., 1992. The search for rational drug control, An Earl Warren Legal Institute study. Cambridge University Press, Cambridge ; New York.